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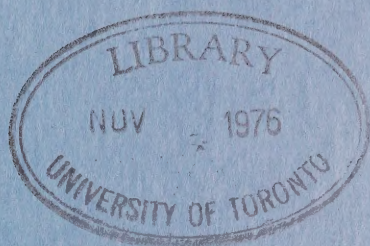
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Government
Publications

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION



M E E T I N G

held at

The Frost Building, Queen's Park, Toronto

on

FRIDAY, MAY 2, 1969

VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 5th Floor,
The Frost Building, Queen's Park, Toronto,
on Friday, May 2, 1969.

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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Mr. I.M. Macdonald (Chairman)

Prof. A. Brady

Prof. D.G. Creighton

Prof. J. Conway

Dr. E. Forsey

Prof. F.W. Fox

Dean W.R. Lagimodiere

Rev. Dr. L. MacIsaac

Prof.

The Frost Building, Queen's Park, Toronto

Mr. J.H. Perry

Prof. T.H.B. Symons

Mr. D.W. Stevenson

Mr. R.A. Farrell

Mr. G. Fossen

Mrs. A. Murray

Mrs. J. Wilensky

MEETING

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FRIDAY, MAY 2, 1969



VERBATIM REPORT OF PROCEEDINGS

2.

--- At 9:45 a.m.

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 6th floor,
The Frost Building, Queen's Park, Toronto,
on Friday, May 2, 1969.

PRESENT:

Mr. I.M. Macdonald (Chairman)

Prof. A. Brady

Prof. D.G. Creighton

Prof. J. Conway

Dr. E. Forsey

Prof. P.W. Fox

Dean W.R. Lederman

Rev. Dr. L. Matte

Prof. J. Meisel

Mr. J.H. Perry

Prof. T.H.B. Symons

Mr. D.W. Stevenson)

Mr. R.A. Farrell)

Co-Secretaries

Mr. G. Posen)

Mr. A. Murray)

Secretariat

Mrs. J. Wilensky)

--- At 9:45 a.m.

THE CHAIRMAN: Gentlemen, I think we might begin. We have a fairly full agenda ahead of us for the day.

I would like to report the apologies of two of us, Professor McWhinney who was detained by the exigencies of transportation of the day, and Mr. Seguin who regrets that he could not be with us on this occasion either.

I was asked by the Director of the Federal-Provincial Affairs Secretariat to inform the people of their proper place and station. We received a bill for the luncheons which were provided by the Civil Service Association cafeteria on two occasions recently for sub-committees of this group. First of all, this account was addressed to Mr. "Gatehead". Secondly it was descriptive in this manner: "Workingman's luncheon for fifteen people". (laughter)

REV. DR. MATTE: Democracy!

THE CHAIRMAN: I am glad to hear that it is thought that we work as hard.

I think since we last met there has been one meeting of the Continuing Committee of Officials, on which Mr. Stevenson will report under item 2.

As you know, the next meeting of the Constitutional Conference is scheduled for June 11th to 13th. I am not sure, I do not think we have called it the third Constitutional Conference. I don't think it is. In fact it will be the first working Constitution

Conference as they have described it, which again may be an invidious distinction, but the intention is that it be a closed meeting, and that it be a working session for both the heads of government and their principal advisers. As I say, it will be a closed rather than a public, televised session. The timetable calls for possibly another such meeting in the autumn prior to a full Federal-Provincial Constitutional Conference again before the end of this calendar year.

Meanwhile the plethora of ministerial committees have been established and are preparing to meet, committees in seven parts, Don? The committee on the Senate, on the official languages, on the judiciary, on fundamental rights -- six, I guess, really -- committee on regional disparities and the Tax Structure Committee. Appointments have all been made to those committees. Many of them are going to meet approximately at the end of May. We are making arrangements within the Ontario Government for support staff for all of those sub-committees. The Prime Minister of Ontario has appointed quite a cross-section of his ministers to serve on those different committees, and they in turn will form an umbrella Cabinet Committee on the constitution, so that there will be consistency. Our secretariat and our staff will provide the technical support for that committee and in turn, the work of this committee will be funnelled into it as well.

I think those are the only items I had to report on in retrospect and in prospect. You may want to carry on from that, Don, by saying something of the work of the three-day meeting which took place last month.

MR. STEVENSON: Yes, we met on April 15th, the continuing committee on federal-provincial fiscal and economic matters, the meeting being largely concerned with the agenda for the next meetings of the Tax Structure Committee.

Here we had, I think, three problems. One: should we meet as quickly as possible (the Ministers of Finance) in order to fulfil the desires of the Prime Ministers in February to get some of the short-run financial problems out of the way; or, should the Tax Structure Committee not meet until after the federal government had brought down its White Paper on taxation reform in June, at which time the federal government position on quite a number of federal-provincial financial matters would probably come out into the open?

The discussion, I think, resulted in the situation that the Tax Structure Committee will not meet until September, unless there are a number of provincial ministers who feel so

strongly about it that they request an earlier meeting.

The Tax Structure Committee, when it does meet, will have before it work which will be done over the next two or three months on projections of revenues and expenditures by the civil servants - a much less elaborate exercise than the one carried out in 1964 - 1965, partly because a lot of the provinces did not want to enter into an elaborate exercise until they had some assurance that the federal government would act on it when the results came out.

They will also have before them the federal government White Paper; and certainly in September there will be a preliminary run-through of provincial commentary on the federal proposals for tax structure reform, which will certainly involve aspects such as integration with the provincial taxation system, and whether or not the federal government wants to have an abatement system, and like matters. It may also involve some new federal presentations on shared cost programs.

The other aspect, I think, of the short-run financial problem that came up in February, was the complaint of a number of provinces that shared cost programs were being cut down because of financial constraints at the federal level. This referred

particularly to areas like the urban renewal projects, Health Resources Fund: secondary, vocational and capital construction in education. On these there may be some new federal proposals, particularly if they find themselves in a surplus position as a result of some provinces not taking up Medicare. However, we are not very hopeful about this, and certainly the federal people have repeated their very strong feeling that severe restraint by all levels of government should be the order of the day for the next year or two.

Following the first day of fiscal and economic matters, the continuing committee of officials on the constitution met on April 16th, 17th and 18th. The bulk of the discussion was devoted to the papers which we have before us today, the federal papers on the taxing power and on the spending power.

The final day of the three-day meeting was devoted to a very brief discussion of the possibility of some kind of constitutional reference or constitutional provisions on the question of regional disparities. This was only a very preliminary discussion.

The final part of the meeting was devoted to the federal-provincial organizational back-up to ministerial committees and when they would meet. As Ian has said, it was established that pending the agreement of provincial ministers, the first round of ministerial meetings would be from May 21st

through to about May 30th -- normally about two days per topic.

I think the conduct of the meetings and the various points of view expressed at them, might come out better when we do discuss the actual taxing and spending power papers. The discussion was not solely centred around the federal papers. Certainly a number of propositions had been placed in these areas by several of the governments over the course of the last few months.

As was mentioned in the notes for the meeting, the draft Ontario paper was given out in at least its main points, although not as a formal presentation by the Ontario government.

So that we did have a number of governments expressing quite distinct views during the three days on the taxing power. They ranged from British Columbia on the extreme, which stated very flatly that various taxes should be discreetly divided as between the federal and provincial governments, and there should be no shared tax field. British Columbia essentially says: "Give the provinces the direct taxes and the federal government the indirect taxes, and you get away from all of the problems of trans-border activities or subsidies or implicit tariffs, which indirect taxes can bring forward", which not even Quebec supported in its form. On the other hand, you had a number of the poorer provinces who were not

really concerned about getting additional taxing power: it is grants and equalization payments which are their bread and butter.

We had a good technical discussion on some of the problems of the implicit tariff argument which comes out in the federal paper, if the provinces were to be given indirect taxation power.

We were putting forward (The Director of our taxation branch) somewhat more detail on a proposal for an inter-governmental tax collection agency which, with the use of modern computer techniques, could certainly get away from a number of the problems of duplication of tax collection, and could permit even quite different bases for taxes in the same area being levied by the federal and provincial governments.

On the spending power, I think the main element of discussion was, first, the philosophy of the federal paper at the beginning: Does the national interest generally justify federal incursion into provincial fields through shared cost mechanisms, and, if so, what constraints should there be on it?

There was a good deal of provincial acceptance, I think, of the basic amount of limitation on the federal spending power suggested in the federal paper. There was almost unanimous disagreement with the federal proposal for provinces

not getting into the shared cost programs, and the payments should be made directly to individuals rather than to the provincial governments.

Maybe that is enough for now. When we get to discussing the actual papers, I think we can get into the details.

THE CHAIRMAN: Are there any questions then on any of these reports, or on recent events, that are in anyone's mind?

PROF. BRADY: Is there any particular alignment of the provinces on the issues as to spending power as raised in the federal paper?

MR. STEVENSON: I would think that from Quebec, Manitoba (very strongly) Ontario, and British Columbia ---

MR. POSEN: Even Nova Scotia.

MR. STEVENSON: Even Nova Scotia, there was a strong feeling that each level of government should respect its own jurisdiction; and that if you start from a principle of federalism that does define jurisdictions, if not discreetly at least fairly clearly, that you should look on devices of shared cost programs as only last resorts.

Two or three of the other provinces did not seem to mind, and the federal government was, I think, a little bit fuzzy on this one, because some of the provinces detected a little bit of difference in the federal paper as between the

philosophic opening of the first three or four pages and the actual proposals at the end. I gathered from some of the federal people that during the stages of approval of the federal papers, in the hierarchy, there was a good bit of change made in the actual paper; that the officials of the federal government felt that the actual proposals represented quite a departure from the traditional federal view that the spending power should essentially be unlimited, and that the provinces felt that the earlier part of the paper still represented the old views to quite an extent, and were told that this had to be put in just to meet the feelings of a number of the ministers who did not want to give up any limitation on spending power. Certainly I noticed the difference. I see a few nodding heads. The second part does not necessarily follow the first. Gary, you probably can give a better summary of classifications of provinces.

MR. POSEN: I don't think there is anything to add beyond those provinces. There really was not much participation by the others, and it is difficult to assess what their feelings were.

MR. STEVENSON: The most provincialist attitude was expressed by British Columbia right through the piece, much more so than Quebec. Manitoba was very, very strong on the spending power as it

has been during the meetings of the Tax Structure Committee during the last few years.

DR. FORSEY: Strong support?

MR. STEVENSON: Strongly against the federal use of shared cost programs in the recent past, and therefore for a fairly strong limitation on its use.

DR. FORSEY: I am not quite clear what is meant by this business of grants to the people of the provinces which had voted against the consensus. How were they going to hand it out; to individuals and, if so, what individuals?

MR. STEVENSON: We had a long argument on this one.

THE CHAIRMAN: Excuse me. I was going to say that if we are going to get into the substance now, I think we might, if there are no other general comments, proceed directly to the next item of business, which is an examination of these papers. Would that be agreeable?

PROF. SYMONS: May I just ask one general question? Don has said, and I think we all understand it, that the most provincialist argument came from British Columbia and, of course, made the point that it was not from the province of Quebec.

Just in general terms, the thing I wonder about: this sort of assessment which we all make

and all are prone to, what does it leave out?

MR. STEVENSON: It probably leaves out the fact that the Quebec people feel they have a very clear position which is already stated in their papers of last summer, and which had been accepted by their government and therefore at the actual meeting they were not arguing with anything like the strength of British Columbia; but I think one might also say, on talking to some of the Quebec officials, that there was a feeling among them that the federal government had made some rather major changes in its traditional view of its powers. This recognition was more forthcoming, I found, in private from some of the Quebec people, than it was from some of the stronger critics.

PROF. SYMONS: Thank you, Mr. Chairman. That is very helpful and very interesting.

THE CHAIRMAN: Any other general comments then before we move along? Then let us go to item 3.

I might say a brief word about the background of all of these papers. First of all, "The Spending Power of the Parliament of Canada", a paper submitted by the federal government: secondly "The Taxing Powers and the Constitution of Canada", also a paper submitted by the federal government: thirdly, a revised draft of "a possible Ontario

position on the spending power" and that, you recall, was very briefly noted at our last meeting but not discussed and we have done some further work on it.

With respect to the two federal papers, these are put in the mill into the Continuing Committee of Officials for discussion, whereas they do not necessarily represent an irrevocable federal position, and it was made clear that they have been through at least the Cabinet Committee on federal-provincial affairs, if not the full Cabinet, and that they represent something of the thrust of federal thinking.

As to our own paper, I think it is fair to say this is a very preliminary paper, and indeed it is preliminary because we want to have the thinking of this Committee, and we have a lot more discussion to do with the government on such a paper.

We are trying to do two things at once, I suppose: both react to the federal initiative in a responsible way, and also attempting to evolve an Ontario position in a responsible way.

The more one gets into the spending power aspect, the more it seems to us that it really is the key that unlocks the door, if not to the whole issue of federalism, at least to the contentious "rooms" in the federal house. We found that, I

think, in our meeting, and I think we will find that as we work through the paper, because every issue raises a fundamental question simply of the relative power of the two governments and, in turn, the capacity to discharge whatever distribution of powers might be determined.

So we have then the spending power. I suppose there is no better way than really to work through this systematically. I do not know how much opportunity you had to study it in depth but we can work through it in turn. Perhaps if you want to be the discussion leader for this purpose, Don, you can work through it with us.

MR. STEVENSON: Well, if the members wish to turn to the formal federal paper, I think there is not too much purpose in dealing only with the summary, if we were to start the spending power

DEAN LEDERMAN: That is right.

MR. STEVENSON: Then the first two pages give the formal legal background, constitutional background to the past use of the federal spending power. Perhaps we might discuss that first if there is any comment on it. There was no real quarrel with the statement of the federal constitutional position during the discussions, but what we had there was perhaps a group of financial people rather than constitutional people who were discussing it

PROF. SYMONS: May I ask one question, Mr. Chairman. Were the summaries prepared by our secretariat?

THE CHAIRMAN: They were prepared by us.

PROF. SYMONS: They are not from the federal ---

THE CHAIRMAN: No, I don't know whether the federal would accept them as adequate summaries, or not, but these summaries were prepared in the first instance for our Cabinet Committee and for our own use.

DEAN LEDERMAN: As far as the statement of the existing constitutional position is concerned, it looks correct to me. It is the traditional position and it is the judicially determined position. The Quebec people questioned it, but they don't -----

PROF. BRADY: Paragraph 5 on page 2, the figures there are that in 1968 to 1969 the government of Canada spent some 32% of its budget on programs which are based largely upon the spending power, some involving payments to persons, some to institutions, some to governments.

MR. STEVENSON: I take some quarrel with that table, Doctor Brady, just because I do not think people quite realize that the federal government included in implicit payments to Quebec

for the programs from which it oted out, and it also included the full amounts of -- or was it the full amount? (Perhaps they did) -- post-secondary transfers which essentially is taken care of, of course, by just a change of tax points. I have to check that one. I am not sure if they just included the adjustment payments or the full amount at 50% of post-secondary operating costs, but the table at the back, of course, gives the breakdown for that table.

DR. FORSEY: The 32% would be the conditional and unconditional together, would it not?

MR. STEVENSON: Yes, together with such programs as family allowances, old age security -- family allowances being the largest one where the provinces have nothing to do with it: it is direct payment to individuals.

DR. FORSEY: Quite.

DEAN LEDERMAN: It is an all-in figure.

PROF. BRADY: It was not very clear really as put here. It is not very clear, I don't think, as to whether it included unconditional as well as conditional.

MR. STEVENSON: Perhaps if you want to look at the Appendix at the back, you can see that unconditional grants, equalization payments, account for the largest share, with the second largest payments being made to the provinces under

the agreement of 1966 whereby 50% of operating costs of post-secondary education institutions would be paid. This \$276 million for that does not include, to the best of my recollection, the four points of personal income tax and the one point of the corporation income tax. These are only adjustment payments made to provinces in addition to this transfer of tax.

Then under conditional grants, of course, the biggest are hospital insurance and the Canada Assistance Plan. Under education and research measures and other conditional grant programs the largest are capital grants for technical schools, which are the ones being phased out right now.

DEAN LEDERMAN: I think it is most significant to have the dimensions of these figures, so that we know how much is involved.

MR. STEVENSON: Right.

DEAN LEDERMAN: The general accuracy of them is not being questioned, is it?

MR. STEVENSON: No.

DEAN LEDERMAN: So that this sort of proportion may vary, and it might be a percentage point or two out on the proportions, but even so it is in the neighbourhood of 30%.

THE CHAIRMAN: Yes, the only possible particular inaccuracy on page 3 of the table -- Metropolitan Toronto Conservation -- which is in the

process apparently of being withdrawn.

DR. FORSEY: Where is this, on page 3?

PROF. BRADY: At the back of the Appendix.

MR. POSEN: Of the table, end of the spending power.

THE CHAIRMAN: If you have been reading the Toronto papers, you will be familiar with that. Page 3 of the table.

PROF. CREIGHTON: Metro Toronto Conservation Authority.

THE CHAIRMAN: Yes.

MR. STEVENSON: All of the conditional programs with a note "3" after it on pages two and three, they have added in the implicit payments to Quebec, which has opted out, which is several hundred million dollars.

DR. FORSEY: In effect Quebec gets the money.

DEAN LEDERMAN: Yes, it is a little difficult to call it a conditional grant, I suppose, but since they are totalling conditional and unconditional grants, what Quebec gets is an unconditional grant because they have opted out.

THE CHAIRMAN: Is fiscal equivalent a grant?

MR. STEVENSON: No.

DEAN LEDERMAN: Yes.

MR. STEVENSON: I think Quebec would argue, since it levies its own tax on this and collects it.

DEAN LEDERMAN: For its points on the income tax, but I think they would not have the points -- that is just methodology -- they would not have the points unless they had opted out.

MR. STEVENSON: Right.

DEAN LEDERMAN: So clearly, just methodology.

DR. FORSEY: I should have thought so, yes.

MR. STEVENSON: Although if all the provinces had taken advantage of opting-out, what it would have involved was an additional abatement.

DEAN LEDERMAN: Then you would not be talking about shared cost programs at all.

DR. FORSEY: There wouldn't be anything to share.

MR. STEVENSON: Right. However, that is a minor point.

THE CHAIRMAN: What do members feel about the significance of the figures of this proportion as far as the spending power is concerned, in terms of the federal role? What lessons does it suggest to us?

DEAN LEDERMAN: I think we look to

the lessons when we discuss the particular reasons the federal paper gives for spending power.

THE CHAIRMAN: Yes, I suppose that is right.

DEAN LEDERMAN: Perhaps we can hit them then, Mr. Chairman.

THE CHAIRMAN: Yes.

MR. STEVENSON: I guess that leads us directly into the paragraphs beginning with paragraph 7, where paragraphs 7 to 10 give some of the main provincial past objections to the use of shared cost programs; and their attempts to give a counter-argument, not necessarily the counter-argument which the federal government gives. I think in the draft Ontario paper there are probably one or two more arguments added in there, and I would think this by no means exhausts the arguments which have been made by the provinces and others.

DEAN LEDERMAN: In paragraph 9, Mr. Chairman, it says

"The counter-argument is that the tax
 "payers in each province are represented
 "in the Parliament as well as in the
 "provincial legislatures, and they have
 "participated, through MP's, in
 "parliament's decisions, which is author-
 "ized to spend from the Consolidated Revenue
 "Fund for the purpose of contributing towards

"shared cost programs."

The only point I would make there is that this is against the background that will emerge as we discuss it. I am generally sympathetic to the federal spending power, but I do not think that argument stands up because in so far as the shared cost program is in a field where the province has the legislative power and responsibility, the Members of Parliament from Ontario do not represent the people of Ontario for that purpose.

DR. FORSEY: Quite.

DEAN LEDERMAN: That is the point.

MR. STEVENSON: The argument of provincial versus national constituency, I think this came up very very strongly, with the exact point that you have been making.

PROF. BRADY: It is a dubious argument, I would think.

MR. STEVENSON: The federal people skated away from this by saying that they were not necessarily making this argument; they were just listing the arguments that could be made.

DR. FORSEY: Like Prof. Atkey.

MR. STEVENSON: The parallel is there.

DR. FORSEY: People who list arguments, especially governments listing arguments with which they do not agree, should be rather cautious, I think.

DEAN LEDERMAN: It is dangerous to be right for the wrong reasons.

DR. FORSEY: Yes.

PROF. CREIGHTON: This is a very curious paper; changes as it goes along, does it not?

DR. FORSEY: I don't know that it does so much really. After all, if you are considering the possibility of making changes, you may very well start from a certain position and then point out various things.

THE CHAIRMAN: Could we just look through these? I would like, as we go through each of these points, to know what your judgment or thinking is.

MR. STEVENSON: Perhaps starting with paragraph 8.

THE CHAIRMAN: Yes, take each of these points in turn, each of the criticisms. Let us examine the criticisms on their merits (because these arguments are made all the time) and see whether we think they are valid arguments. The fact that they are made politically, of course, makes them arguments, but perhaps we can see how much validity there is in them.

PROF. BRADY: Mr. Chairman, I think probably some other members of the Committee (certainly it is the case with me) only got these documents yesterday, which is due to the vagaries of the Post

Office which are very great indeed now. I had various other engagements, unfortunately, yesterday, so my reading was rather hasty on all these documents.

Some of us, after all, in reading them carefully and in reflecting on them, might have observations.

THE CHAIRMAN: That is too bad. I did not realize that.

MR. STEVENSON: Was this the general situation?

PROF. MEISEL: I got mine several days ago.

REV. DR. MATTE: I got mine Monday noon.

MR. STEVENSON: I understand that they were sent last Thursday.

DR. FORSEY: I got mine, I think, Monday. The trouble is I have been bogged down on examination papers.

PROF. MEISEL: Probably better written than this.

THE CHAIRMAN: Prof. Brady is the one who is located nearest to this building, which accounts for the fact that he was the last person to receive it in the mail.

PROF. BRADY: It may be partly in the University of Toronto mail, of course.

PROF. CREIGHTON: Even so, when you

get a bulky lot of stuff like this on Tuesday and are expected to discuss it on Friday, it is a little fast.

PROF. MEISEL: Mr. Chairman, I am a little at a loss to know what you expect us to discuss. It seems to me that, as you suggested earlier, these questions raise some very profound philosophical issues about the nature of the country; and it seems to me that there might be some value, I suppose, in our discussing whether we think, for instance, that decisions which are clearly in one jurisdiction, the responsibility of one level of government, touch so many other things that are clearly the responsibility of another level of government.

My view of this is that some of this argument is based on the assumption that you can in fact establish water-tight compartments, and I do not accent this. I think that these things are now so interwoven that if you are going to have a federal system we must find means of consulting on all decisions; because it does not matter in whose jurisdiction some of these things are, in that ultimately they are going to affect things which are, by the constitution perhaps, quite distinct but nevertheless are the responsibility of a different level of government. So if the federal government takes action in an area that is

clearly only its own responsibility, it will, in the long run, affect something else that is clearly only in the provincial jurisdiction.

PROF. CREIGHTON: And vice versa.

PROF. MEISEL: And vice versa. So I think to some extent this kind of problem is a very real problem, and the problem that has to be settled is an artificial problem because we do make distinctions that do not in fact hold.

MR. STEVENSON: I may say, just as you start into this discussion, that any comments on this will be very valuable, because it is my understanding that these papers will probably be the basic documents for discussion at the conference of Prime Ministers next month.

DEAN LEDERMAN: We had better take them point by point.

THE CHAIRMAN: Yes, as I say, these arguments are thrown off in a very loose way all the time, and I would like to really dig behind them and see if they say all they mean to say or if there are, as you say, John, deeper implications for the philosophy of federalism and get beyond the superficial treatment.

DR. FORSEY: It is quite true that all these things will get mixed up in practice, but I think nonetheless you will have to have some definition of jurisdiction as clear as you can get it. You

cannot just adopt as your constitution a statement I once heard the Anglican bishop of Ottawa make at a watch-night service for New Year's: "During the coming year, bethren, let us all try to be good and be nice to our neighbours" -- which is quite unexceptionable but butters only a very modest number of parsnips.

PROF. CREIGHTON: What you have just been saying, John, is that it justifies increasing the co-operation and suggests the justification of shared cost programs, does it not?

PROF. MEISEL: That is one solution, and I think in some areas it is probably one I would favour, but it also suggests that in the accompanying definitions of responsibility here one perhaps ought to propose means of consultation so that where you have assigned responsibilities you also very clearly specify how you are going to pursue the implications of making decisions within these assigned responsibilities.

DEAN LEDERMAN: But in the airport business in the province of Quebec there was consultation, and it is a good illustration of the dilemma of consultation. There is consultation and there is decision-making, so they consulted and consulted. Now, you are in this paradoxical position: there is no doubt that the legislative power to say there shall be an airport and to locate it is in the federal government. This has been clearly held in the

Johannsen case. So they were consulting the province of Quebec about something which lay within their jurisdiction, which involved the expenditure of hundreds of millions of dollars. The government of Quebec was consulted and consulted carefully and extensively, and the federal government did not agree with the views of the government of Quebec; they decided to go north rather than south. The right to be consulted does not mean that the consultee has the right to have his views prevail. The point at which the decision has to be made comes, and that is where Eugene's point takes hold, that the constitution has to define jurisdiction at least in this sense: if you cannot agree, if you do not agree, who has the power of decision, which level of government has the power to decide? Something must be done, and if the consultations have not produced agreement, who has the power to go ahead? A federal constitution must do that. So they have said: "We will go ahead north of Montreal " and they have the right to do it, I think. I am told anyway that this conflict between the north shore and the south shore is an old story in Quebec. Mr. Bertrand is from the south shore, he has a constituency there, and it may suit his purpose very well actually to see the airport go north of Montreal, but to be able to say to his constituents: "Well, I tried to get it for you, didn't I, but it is those

fellows in Ottawa who have done me in". Well, this is legitimate politics, I think, and I think the politicians understand one another on this kind of thing. I do not think the objections of the consultee are as serious as they appear to be on the surface.

PROF. BRADY: Well, they can be serious. I don't know how serious they are in this case, but does not Quebec claim it would be spending more money on access roads?

REV. DR. MATTE: No, that is not true, not much importance.

PROF. MEISEL: Without discussing the merits of this particular case, could we just look at it as an example of the kind of thing we are dealing with?

I think Bill is quite right, but the conclusion I would draw from this is that we have to give some thought to the meaning of the term "consultation" and perhaps try to define it in some way which will be satisfactory to all participants as well.

In other words, I think, when I said there should be machinery for consultation, I was simply raising another ambiguity; and that in a federal system you have to decide what you mean by that, and, as Bill says, you have to decide who has the primacy in the final analysis if there is no agree-

ment, who has got to take the final decisions?

The airport case, seems to me, shows very clearly that there is no question that the federal government has the right to make the final decision, but the implications for the provincial treasury and perhaps for the economic growth in the province of Quebec are very serious.

DEAN LEDERMAN: It makes that case too.

PROF. WEISEL: So it is a very good case, because it does raise all these issues, whatever the merits of the details are.

MR. STEVENSON: I spent a couple of nights two or three weeks ago talking to both federal and Quebec people together about the argument on this particular one. I think a lot of the Quebec arguments are a good bit more substantive than political, because they do have a regional development aspect to their argument.

One proposal that was coming up from Quebec was that in a case like this where the federal government obviously has the constitutional right to make the decision, perhaps one should try, at least if it is possible in the consultation procedure, for the province to put forward its set of preferences, the federal government to de-limit, first, the technical scope in terms of location -- where can a site be located without fouling out all the technical considerations; then for the province to suggest sites in order of preference within that

limit; then for the federal government to choose a site from within those suggested by the province perhaps working together with its own people.

DR. FORSEY: Isn't that substantially what they did?

MR. STEVENSON: The problem in this case, there was an argument over the technical aspects. The federal people, I think, said that for technical reasons there could be no site south of the St. Lawrence.

DEAN LEDERMAN: They did not want these great big jumbo jets having to come in over American air space, which I think is a very good point.

THE CHAIRMAN: What was the point of that though, Bill?

DEAN LEDERMAN: If you locate an airport south of the St. Lawrence, and this is for the big new jumbo jets (that is what this is all about) some of the approach paths would have to be over the state of New York.

THE CHAIRMAN: You mean this would slow them down if they got caught up in all that traffic?

DEAN LEDERMAN: No, it won't slow them down, but you have to get American consent, and there are American air force bases in these areas. You cannot bring planes into a Canadian airport over American air space without writing a very complex treaty with the United States. Do you really want

them to be able to control part of the air space which constitutes the approaches to what will be the major Canadian international airport?

REV. DR. MATTE: That was a very strong argument.

THE CHAIRMAN: I suppose it is beside the point here, but I am curious. Surely most of the flights coming in to Montreal and Toronto must come over the United States.

DEAN LEDERMAN: They don't have to approach the airport over the United States. These are the approach lines.

THE CHAIRMAN: You do if you are coming from New York, Miami or West Indies.

PROF. CREIGHTON: These are overseas.

DEAN LEDERMAN: But you are high enough up. This airport will be so close to the border, you would be at a low altitude.

THE CHAIRMAN: How far up does the -----

DEAN LEDERMAN: How far up is up?

THE CHAIRMAN: Yes. I mean, obviously we should have the professor of space law for this.

MR. STEVENSON: The U2 was not high enough.

DEAN LEDERMAN: In international law this is the roof-over-sovereignty problem. You do get high enough up that the air space is international; you can get high enough up.

MR. STEVENSON: Not when you are approaching an airport.

DEAN LEDERMAN: Not when you are coming in at five to ten thousand feet, and these great big planes have to start dropping -----

THE CHAIRMAN: Some miles.

DEAN LEDERMAN: A hundred miles out.

REV. DR. MATTE: Two hundred miles.

DEAN LEDERMAN: Two hundred miles out they have to start dropping altitude, and you have a noise problem. If the people in Burlington Vermont do not want the noise of plane after plane coming into this Montreal airport, you have got trouble.

PROF. SYMONS: Prof. Lederman, Mr. Chairman, sounds like a north shore boy.

DEAN LEDERMAN: It just illustrates, I suppose, the technical problems that Don is talking about.

MR. STEVENSON: But that is not a shared cost program. This is direct use of spending power within its own jurisdiction.

DEAN LEDERMAN: But the federal government admitted that this did affect many things provincial, and they did consult, but they did not agree with what they heard from the consultees.

DR. FORSEY: No, it is not a shared cost program, but it is relevant to what Prof. Meisel raised, which I think was a validly broader point

-- a point cannot have breadth, though -- a broader consideration.

DEAN LEDERMAN: Prof. Meisel's point runs through the whole thing.

PROF. CREIGHTON: Could I ask a very general question about the position taken by the federal government. To make an obvious point which we are all aware of, this is a series of conferences for a new constitution for Canada, and here we have a long paper presented by the federal authority justifying its activities in a variety of developmental and social services. This justification is exclusively, as I read this paper, on the ground that the federal Parliament and government can spend its own money in the way it chooses to do. Has the federal government, as far as you learn, never considered even the possibility of arguing that some of the matters ought to be transferred constitutionally to its control, or is this whole elaborate business based upon the fact that the existing division of powers is given and must not be changed?

THE CHAIRMAN: That is a very good point, I think.

PROF. CREIGHTON: I mean, it is just incredible. This is the only justification.

DEAN LEDERMAN: But they deal with that explicitly. They say what they are arguing here is

on the assumption that there will not be a change in the distribution of powers, but then they say that there may well be a change in the distribution of powers.

PROF. CREIGHTON: But they are not arguing in favour of it.

DEAN LEDERMAN: No, they are not.

PROF. CREIGHTON: This is the incredible feature of this paper. They are taking not the bold course in the matter, where every other province is taking the bold course; they are taking the permissive course, the yielding course, the retreating course.

DEAN LEDERMAN: Sorry, I don't agree. That is not the impression I get from the whole paper.

MR. STEVENSON: Paragraph 32 is in fact

DR. FORSEY: I was trying to draw attention to that. The underlying part of it there is, I think, important. It follows that the procedure for limiting federal spending power which is here suggested at any rate is subject to the adoption of a distribution of legislative powers which will ensure a strong federal government as well as strong provincial governments. This does not seem to me to rule out the possibility of widening of power of control.

PROF. CREIGHTON: But it is not asserted.

DR. FORSEY: No, I know it is not asserted.

PROF. CREIGHTON: Where is it asserted? That is the point I am making.

PROF. BRADY: I think, is it not the case, they are leaving this for later discussions, trying to de-limit the subject.

PROF. CREIGHTON: It seems to me you ought to start. Here we have had this going on now for two years, and this basic question has not yet been approached.

THE CHAIRMAN: It does raise a very interesting question in the logistics of the discussion. There are three elements here presumably at work. There is, first of all, the basic distribution of powers as to the responsibilities of each level of government. Then there is the question of the distribution of the taxing power in terms of the capacity to discharge the responsibilities which fall under the distribution of powers. Then there is the spending power which is, of course, related to both of those subjects, the distribution of powers and the taxing power, in terms of either the limitations or scope for spending at each level of government.

The real difficulty comes in asking what is the right place at which to begin. In terms of my logic, I would say the place to begin is the

distribution of powers. One first of all says: "Who has to do what?". Then you decide, secondly, what taxing powers and spending powers are necessary to discharge those efficiently and sufficiently. For various reasons, we seem to be coming at it the other way. That is only my personal view. Perhaps others feel the logic could be argued the other way.

PROF. CREIGHTON: Everybody has been talking about a strong central government. The province of Ontario is talking about a strong central government; the federal people in this paper, and they never indicate what they mean by a strong central government, they never bring it down to the possession of certain definite powers. This is an incredible exercise, and it has now been going on and on and on, and it is just going on the assumption that this division at the moment is the right one. Why should we assume that?

PROF. SYMONS: Could we ask, Mr. Chairman: in the discussions, either formally in the committee or informally, has there been frank or direct discussion of distribution of powers, or have the discussions been along the lines that are crystallized in this paper?

MR. STEVENSON: I think the federal government's position from the beginning has been that it should be possible, going through the whole

exercise of constitutional review, to find agreement on certain aspects before you have the final picture. I think also there has been some federal feeling that after you do get through an investigation on distribution of actual legislative powers, that you probably will not find all that much substantive change; therefore in your argument you should be able to eliminate a number of the difficulties of the working of federalism by approaching it through taxing and spending power before you actually get to the distribution of legislative powers.

PROF. CREIGHTON: Of course, that is obvious. If you make all arrangements within the taxing and spending power to fit the constitutional division of powers as it now stands, of course, you won't have any reason to change anything.

MR. STEVENSON: Except I think the federal people over the course of the past year have undergone a fair bit of change in this. A year ago I would think that they probably did not want at all to get into specific discussion power by power on the possibility of major changes. They are now certainly embarking on a functional review of specific power by specific power in each year, and I think their full understanding is that by the fall this issue will have been joined, but they will still argue that the right way to proceed is this way rather than the powers first.

DEAN LEDERMAN: Let us remember though that at the constitutional conference in February this is the priority the provinces demanded.

MR. STEVENSON: The shared cost, current shared cost program, quite.

DEAN LEDERMAN: The federal government did not want that first; they did not even want it first in the conference. Mr. Trudeau receded from this position and let them have it first. The result of the conference was that they wanted it discussed first. The trouble is that all these things have to be fitted together; each had implications for the other; but in order to discuss one you have to make assumptions about the others keeping still.

MR. STEVENSON: I think what this has done, for the first time in the whole constitutional discussion at least of officials, it has forced people making any arguments to argue from a broader position, at least an implicit position of the basic form of federalism that we should have. I do not think any of the discussions until this point have done that.

DEAN LEDERMAN: They had a very neat order of things: first, the Charter of Human Rights including linguistic rights; then reconstruction of federal institutions; last of all the distribution

of powers; but in response to pressure from the provinces, they have turned this around.

MR. STEVENSON: Right.

DEAN LEDERMAN: Or at least agreed on the simultaneous character of these problems or interlocking character of them. This is a great advance, but now that you are going to talk about them, not only in themselves but in their relation to one another, you take the spending power and you assume that the distribution of powers is going to stay put, and say; "What shall we do with the spending power."

Now, another round maybe to say; "How would we change the distribution of powers?" and then take a second look at what you said about spending power and say: "If we are going to make this change in the distribution of powers, we can forget about point X in what we said about spending power, because that now has been changed."

PROF. CREIGHTON: But it seems to me you will have to go over the whole thing again if any substantive changes are made.

DEAN LEDERMAN: That is right.

PROF. CREIGHTON: A long circumlocution way really of doing it, which will not end up in anything.

DEAN LEDERMAN: Except the status quo.

PROF. CREIGHTON: Except the status quo,

with more money for the provinces, and that will be the end, nothing but.

DEAN LEDERMAN: That might be a very good result.

DR. FORSEY: It might be a lot better than the other results that are at all likely.

I think there are several things have to be borne in mind here. First of all, the whole thrust of discussion of the constitution for some time has been in the direction of giving the provinces more power. I do not like this.

THE CHAIRMAN: Neither does Mr. Hellyer, I believe.

DR. FORSEY: They are totally irrelevant, but this has been the fact, this has been the way things are going; this is what the proposals have practically all been.

Now, if you are the government of Canada, faced with that, and you don't feel enthusiastic about it (and it is quite plain that the government of Canada is not enthusiastic about it) then you are almost inevitably, in this climate of opinion, forced into a defensive position, into a holding action.

If also you feel, as I suspect the Prime Minister does, that if you can get some of the linguistic questions and that sort of thing disposed of you will have a much better climate for considering

the re-allocation of powers on a functional basis, then you can very well say: "Well, give us a breathing space. Let us hold things where they are for the time being while we give French Canada its due place in the working of the whole country."

Then again, with this whole background, if you are discussing the spending power, then it seems to me you have got to say what they do say in 32 (and I think 32 has to be read in this very narrow way): "You are objecting to the wide use of the spending power. Well, if we are going to get further restriction of the power of the Parliament of Canada in regard to specific matters, then the spending power as it is assumes importance". We are not giving up anything essential on the spending power until we know what the distribution of powers is. If the distribution of powers turns out to be one that gives provinces a mixture of powers, then there will be more need for stronger spending power on the centre. If, on the other hand distribution of powers remains what it is, then we can consider some adjustments in the matter of the spending powers.

A fortiori, I would say if you eventually arrive at a situation where the government of Canada comes along some years hence perhaps and says: "Now, hadn't we better consider the possibility of extra powers for the centre in certain matters?" then it

can say: "If we do that there will be further adjustments that may be made in the spending power" but for the moment just say: "We are not giving up the spending power until we are quite sure we are not going to be left with much smaller jurisdiction."

PROF. BRADY: Also I think another point has to be recognized, that there were some abuses in the past about spending power, which this paper recognizes. Indeed they have been stressed greatly by the provinces. The paper addresses itself in considerable space to trying to come with charges of these abuses, some of which it admits, and how perhaps they may be avoided in the future. So apart altogether from whatever distribution of powers you have, you still have this problem, as it were, because you are likely to have something similar to the pressures for services in divided jurisdictions.

DEAN LEDERMAN: In other words, assuming that the distribution of powers is going to stay as it is, as I read this federal paper, they are still prepared to adopt some ground rules about it.

DR. FORSEY: Yes.

DEAN LEDERMAN: There are some very elaborate proposals about ground rules later on.

MR. STEVENSON: The other thing which I think comes into this is the Prime Minister of Canada's own view of the spending power. I think

perhaps this is the subject on which he has expressed himself most publicly over the last few years in the whole constitutional process.

The actual paper that has come out is, I would think, a compromise between the kind of views he expressed before he came into politics, and the traditional federal view that there should not be any limitations.

DR. FORSEY: I think he has learned to put a little bit of water into his pre-political wine since he has assumed the responsibility as head of the government of Canada.

I still think the point of this thing in 32 is: "Look, we are prepared to make certain adjustments given the distribution of legislative powers which is not going to hamstring the centre, but we are not prepared to make all these adjustments on the spending power if we are going to be cut down to a very minor, insignificant status in the whole affair -- just a sort of information centre."

THE CHAIRMAN: Could I suggest a two or three minute break for the sake of our scribe, and perhaps to stretch our legs.

PROF. CREIGHTON: Mr. Chairman, my innocent and simple question ought not to be permitted to disturb the progressive -----

THE CHAIRMAN: I think it is a propos.

PROF. CREIGHTON: --- course through this paper, which is an important thing.

---- Short Recess

THE CHAIRMAN: Shall we move along? We were on page 4. Are there any other comments on the three arguments.

MR. STEVENSON: The argument in paragraph 10, of course, is one that the provinces have been making with much greater force in the last two or three years; and one thing that they have argued quite strongly is that if you accept the federal government's view of the taxing power, you have equal access but not a sharing with taxation power; that this almost inevitably leads governments into becoming, as I say, more responsible entities that try to develop a set of integrated policies through the particular spheres of their responsibilities; and that if you go for a greater degree of independence in taxation, then this leads you into a desire at least for much greater degree of independent decision-making in spending; and that along with the new developments in government management techniques, management by objective program planning budgeting system, a much greater emphasis is being laid on each level of government establishing its own priorities and establishing a longer term of planning framework for its own programs.

The interjection into this of shared cost programs or other forms of federal intrusion, creates a good bit more problems than it would have in a period four or five years ago.

DEAN LEDERMAN: Of course, they do frankly acknowledge now that this is the imposition to some extent of country-wide priorities ahead of provincial ones. They do recognize this and they talk about harmonizing it.

MR. STEVENSON: Yes. Then you get into the national interest argument.

DR. FORSEY: Yes, which of course is vastly blown upon now by the intelligentsia, though God knows why they are called so, as Healey William used to say. It is almost a dirty word in many quarters now, talking about national interest. Poor John A!

THE CHAIRMAN: I would like to get particularly to this very interesting point about the payments back to the individuals, Don.

MR. STEVENSON: I think the paper really divides itself up into two pieces. The first goes the first nine and a half pages, which gives the various arguments that have been made for and against shared cost programs and the use of spending power. Starting at paragraph 31 the federal proposal is developed.

THE CHAIRMAN: I think this is the proposal that is going to be the substance of discussion in the middle of page 10 (and we might perhaps get right into it) which in essence is that if the arguments of the provinces against shared cost programs hang on the point that they do not wish to participate in them or they feel they do not conform to their scale of priorities; then rather than there being fiscal equivalents made or unconditional grants made back to the provincial governments, the citizens of the province should have a payment made back to them directly as citizens from the federal government, so that they are not obliged, as citizens of that province, to participate in the program, but in turn they get their direct financial compensation to them rather than to the provincial government.

DEAN LEDERMAN: Where does it say that, page 10?

DR. FORSEY: No, it is on page 11.

MR. STEVENSON: No, it is page 12.

THE CHAIRMAN: This whole argument starts in the middle of page 10 and builds up and is developed.

PROF. CREIGHTON: That is right, 11 in 33, the second part.

THE CHAIRMAN: It is the middle of page 10.

"A possible procedure for limiting the
"use of the spending power"

from then on this argument is developed.

DR. FORSEY: But the grants to the
people really come out first, I think, on page 11
and 33, sub-paragraph 2.

MR. STEVENSON: That is right.

DR. FORSEY: "In the provinces whose
"legislatures have voted against the
"consensus, the people of the pro-
"vince will be paid grants equivalent
"in the aggregate to the average per
"capita amount paid to the participating
"provinces"

I am perhaps more stupid than usual this morning,
but I don't know how this would work out. Suppose
a province stays out of, let us say, Medicare. Does
that mean that you and I and the next chap get
a per capita grant from the government of Canada
or what? I don't understand it.

PROF. CREIGHTON: That is what it means.

MR. STEVENSON: The federal proposal,
in so far as we could understand, envisaged a direct
per capita grant which would not be related to the
amount of tax paid.

DR. FORSEY: Would it go to you and
me and the next person?

MR. STEVENSON: One of the people at

the conference brought up the question: Let us suppose that the amount of money which a province might have had, had it got into the program, would be \$50 million across the country. Then, say, if the province of Ontario decided to opt out, you would have payment of \$7.10 or so for each person in the province.

DR. FORSEY: Then how would this go, to the children or would it go to their parents?

MR. STEVENSON: We brought up the question of would this involve 7,500,000 cheques, one to each baby and one to each person in the province, of \$7; or, if it were a program, say, where the opting-out would have been equivalent to \$5 million, would you do a cheque of 70 cents?

PROF. BRADY: One sees a skilful political hand in this.

DEAN LEDERMAN: It would be administrative-ministry, would it not?

DR. FORSEY: That was an unskilful administrative one, I would say.

DEAN LEDERMAN: The payments should be the government's.

DR. FORSEY: I can see political reason for it and also some reason in equity for it, but frankly I don't know even with computers and this kind of thing, how you would work it out; because if you say "per capita" that takes in everybody, a

baby a year old to a doddering old centenarian.

On the other hand, if you say it goes to the tax payers, then where are you? The chances that put in their income tax? They will not be the people who need it. If you say "minor children" the payments to minor children are given to the parents, father and mother. The administrative complexes of the thing seem to me perfectly staggering.

DEAN LEDERMAN: I think that part of it is a straw man put up to be knocked down.

MR. STEVENSON: This raises two or three other problems too. If it goes back to the tax payer you probably get some kind of direct equivalent from what would have been paid in. If it goes back to each individual, then you have in effect a form of income re-distribution through a means which is not directly a program of income re-distribution.

We were arguing that perhaps if it is money that a province should have used otherwise, it will be up to the province to decide what form of re-distribution would be evolved with this money.

DR. FORSEY: Some of the proposals are just too clever by half I think.

THE CHAIRMAN: It clearly must be wrong, Eugene, because everything you have said

is virtually a paraphrase of what the Quebec delegation said. So I take it from that ----

DR. FORSEY: I do not exclude the possibility that even the Quebec delegation may be right. As I used to say in earlier years, even the Montreal Star is occasionally correct.

DEAN LEDERMAN: It is incredible. Even the Social Credits of Alberta, when all the oil money came in and they could distribute the dividends, they tried it either one or two years -- \$25 a head, was it not, which they got not in the Major Douglas way but the old capitalist way, and they found it completely unworkable. How do you define a resident of the province? How do you stop fraud and so on? It is impossible.

DR. FORSEY: Somebody said it was a straw man. I cannot imagine why they put up such a miserable straw man, what possible good they thought it would do them.

DEAN LEDERMAN: Surely the payment must be to the government, fiscal equivalent. The people of the province are represented in the legislature every year.

THE CHAIRMAN: But their argument is that the people are represented in the federal Parliament, and the federal Parliament collectively decides on a certain course of action for spending money. If it involves expenditure in a realm of

provincial jurisdiction, then they argue that the provincial legislature, which has the responsibility for matters of provincial jurisdiction, is perfectly entitled to say that the province, in terms of that provincial field, will not participate; but then the federal Parliament has a right to say that if by constitutional reason the people of the province are prevented from sharing in its spending, so to speak, on that particular activity, then they should be entitled to directly not to have to pay, as it were.

PROF. BRADY: The error starts with this distinction of national constituency, local constituency and provincial constituency, a distinction which I think would lead to all kinds of complications.

Federalism, after all, is in its essence governments at different levels, presumably doing things in areas defined by the constitution. I think this attempt to introduce another element that should govern the functioning of the federation will only add immeasurably to its complications.

DR. FORSEY: Well, I don't know that I would agree with that. I think there you get up against the problem that Prof. Meisel raised earlier, that no matter how carefully you define this jurisdiction, you are going to get overlapping.

PROF. BRADY: I will agree with that, yes.

DR. FORSEY: I think the difficulty arises from a confusion about the national constituency and the provincial constituency. It just seems to me, though, that this proposal is quite impractical, and I cannot understand why they would bother putting it up to be knocked down. I presume not only the Quebec delegation but also the Ontario delegation and others made this kind of objection.

THE CHAIRMAN: We expressed these points. I think a number of other provinces did. Don, I have forgotten the record, but it seemed to me Saskatchewan expressed some interest in this -- you will be glad to hear, Bill, being a native of that province.

DEAN LEDERMAN: I won't say I am glad, but I am not surprised.

DR. FORSEY: Need we spend much time on this? Surely there is consensus here that this particular proposal of the government of Canada is "nuts".

THE CHAIRMAN: I don't know what the federal politicians will say when they come to join in the political meeting, but I must say there is, what shall we say, a certain amount of paternal sensitivity among some of the federal officials on this score. I think they rather like this idea.

PROF. CREIGHTON: I like it too, Mr.

Chairman, very much -- an admirable scheme.

DR. FORSEY: I like it if you can make it work, however, but I don't think you can.

PROF. CREIGHTON: I would love to see the poor citizens of Quebec getting another payment directly from the federal government -- that greedy government that hasn't anything to do with it -- a very pleasant sight indeed.

DR. FORSEY: If you can do it, that is fine, but I don't think you can.

PROF. CONWAY: I suppose we would all agree that this proposal is "nuts", but what would you say about the money being given directly

DR. FORSEY: I think that is all you can do, and then what they do with it -- they may do things with it that I don't like at all, but if it is within their jurisdiction and you say to the other provinces: "If you do this within your jurisdiction we will give you the money" and we say "We don't want to do that within our jurisdiction", I think there is a good case for saying: "You can take the money and build yourself more stately mansions of some other kind".

DEAN LEDERMAN: The point is democracy and responsible government. In so far as the provincial field of jurisdiction is involved, whether it is involved by way of overlap and concurrency, or

whether it is involved exclusively, the voice of the people, under our system of parliamentary democracy, is the legislative assembly of the province; and the agent of the people for purposes of provincial heads of jurisdiction, exclusive or concurrent, is the assembly in the government of the province. That is where you pay the money and that is where you get the decision on how to use it. Later on, they quite properly (in my view) uphold democracy and responsible government in almost those terms.

DR. FORSEY: The thing is it is quite impractical in the first place; in the second place, any argument you make for it is going to be so extraordinarily complicated that it is just not going to get across. You are going to be on frightfully weak ground in trying to argue this kind of proposition.

I think the attitude of any responsible member of any provincial delegation would be simply to say: "Look, you cannot do this, it is not feasible" and I would be inclined to think the government of Canada would be obliged to say "Yes"; and if we try to do it and find some wonderful computerized way of doing it, it would still be a terribly difficult and terribly weak case to make. We are spending money in an area of provincial jurisdiction, but we are not going to let the

provincial government have any fiscal equivalent, and the answer will be: "Why not?" Because, as Bill says, the provincial government and legislature are the representatives of the people of the province within fields of provincial jurisdiction, and there it is.

PROF. CREIGHTON: All it is saying, over again, is that the federal government has chosen the weakest possible basis for its intervention in this field, but it has been forced to do this because of the provincial insistence that this must come first, that is, the spending and the taxing power instead of division of powers.

PROF. CONWAY: Why was this put in in this particular way, do you know?

MR. POSEN: The argument, I thought, was that the provinces complained that money was being taken away from its taxpayers; and the federal government's argument is simply it is going to return the money to the taxpayer and then let the provinces be responsible for taxing.

MR. STEVENSON: Except not to the taxpayers, to the people.

MR. POSEN: Well, that is where their arguments broke down because they refused to. The provincial argument is not logical either, insofar as if the money is given to the provincial government it does not meet the original complaint that the government that is spending the money should be

responsible for raising it, should have its own constitutional jurisdiction. In that case the federal government is raising the money, gets all the blame for the taxes and the provincial government gets it as an unconditional grant and can spend it any way it wants. How do we get around that situation?

MR. STEVENSON: Would it be possible for a brief discussion of the other parts of the federal proposal, the means for achieving consensus? I think whether or not you have this direct payment, you would still have this other proposal before us.

DEAN LEDERMAN: After all, the rest of it could be valid.

DR. FORSEY: Oh yes.

THE CHAIRMAN: That is the method.

DEAN LEDERMAN: And you could change this point to paying the government and not the people.

MR. STEVENSON: I think the rest of it is one of the kind of alternatives described in the possible Ontario paper.

DR. FORSEY: The rest of it is a serious proposal.

THE CHAIRMAN: Let us go on then. Don, do you want to lead this on in terms of taxing power?

MR. STEVENSON: I think if we take page

11 and 12 we have the gist of the basic federal proposal; paragraph 33 (1) the basic principle that you have to have a consensus arrived at by parliament and the legislatures of the provinces that a shared cost program is the means for dealing with a certain problem, before anything is done. Then paragraph 35 and 36 describe how this consensus would be arrived at.

It probably brings in in paragraph 36 an extraneous matter, the existing distribution of seats in the Senate, which created a little flap from British Columbia and others who do not like the existing regional distribution; but I would not think that that particular distribution necessarily has to be the one to be agreed on, although the federal people said that they have gone through a number of alternative ways of arriving at consensus and they felt this was the fairest of all the ones they had dealt with. You do not use the Senate, but you use the four regions, and you have to get the provincial legislatures of the provinces in three out of the four regions agreeing to use the federal spending power in a particular field before anything can go ahead.

PROF. BRADY: Why do they bring in the Senate at all really?

DR. FORSEY: Just a method of weighting; saying this is the weight you will give.

DEAN LEDERMAN: You take the Senate right

out of it and just talk about weighting the provinces for this purpose; but it is two out of four western provinces for that region; two of Nova Scotia, New Brunswick and Newfoundland for the maritimes region.

MR. STEVENSON: Right.

DEAN LEDERMAN: Ontario and Quebec, it is all or nothing.

MR. STEVENSON: Right. I think the interesting question comes up here; does Canada have four or five regions?

PROF. CONWAY: Yes.

DR. FORSEY: Or six by the way.

PROF. CONWAY: British Columbia would argue five.

MR. STEVENSON: Very much.

DR. FORSEY: Joey might argue six.

I am a little puzzled by 37, by what appears at first sight a discrepancy in 36 and 37

"An affirmative vote of the legislatures

"in at least three senate divisions....."

says 36

".... would be required before parliament

"could proceed.

"37. The negative vote on the part of

"any two senate divisions would veto

"Parliament's proposal".

Am I just being stupid again, or is there a discrepancy?

PROF. BRADY: It seems a discrepancy.

MR. POSEN: No, it is right.

Three regions have to approve as soon as two vote "no".

DR. FORSEY: Yes, I see, I was being stupid.

DEAN LEDERMAN: 37 is just 36 in reverse.

DR. FORSEY: Yes. It may be worth while saying: "Look, this is what it means -- two may veto".

PROF. CONWAY: Perhaps someone can instruct me (I am very ignorant about this, Mr. Chairman): in all these considerations we leave out about half of the country territorially, that is North West Territories and the Yukon. What provision is made in the deliberations for the development and control of those regions?

MR. STEVENSON: None: the federal government speaks for them.

DR. FORSEY: They are territories, that is all.

PROF. CONWAY: That does not seem to make sense today; administered territories, is that -----

DEAN LEDERMAN: Unless you are going to carry the provincial border to the Arctic, according to Mr. Bennett's proposal.

PROF. CONWAY: Don't you think that would make sense?

DEAN LEDERMAN: Not right now, no.

PROF. CONWAY: Why?

PROF. BRADY: Well, it is not a fact constitutionally.

DEAN LEDERMAN: There are only about 30,000 people in the whole area.

PROF. CONWAY: But there are vast resources. Should they be administered?

DR. FORSEY: You have been seeing John's vision again.

REV. DR. MATTE: John the Baptist?

THE CHAIRMAN: Mr. Baptist John.

MR. STEVENSON: It has created a bit of a problem.

THE CHAIRMAN: Prof. Conway comes from British Columbia.

PROF. CONWAY: I am of British Columbian origin. It seems to me to make perfect sense. I cannot see this great area, which I am told has immense natural resources which are presently being exploited by Japanese and American industrialists, being left out of our machinery of government. The Japanese, I understand, have invested a billion dollars in plant in North West Territories to extract oil, sulphur and so on, and it seems to me there is no surveillance over this.

PROF. CREIGHTON: There is.

DR. FORSEY: That is the job of the Parliament of Canada. It seems quite impractical to set up provincial governments in this area, and I don't know whether there would be any particular point in extending the boundaries of the present provinces to the North Pole or wherever our jurisdiction ends. If the Parliament of Canada is not doing its job in looking after this, somebody had better do something about the Parliament of Canada.

PROF. CREIGHTON: There is the Department of Indian Affairs and Northern Development which deals expressly with it.

PROF. CONWAY: Yes.

PROF. CREIGHTON: There are two capitals with a variety of local services there.

PROF. CONWAY: But could you not make a case for changing the boundaries of the province? It has been done how many times since 1867.

DR. FORSEY: Yes, you could, but it does not affect the shared cost business anyway, does it? Are we here getting on to a different ground altogether?

PROF. CONWAY: That is true, but I bring it up because I am pretty sure that British Columbia would not agree to this proposal of 36, and consider itself part of the four western provinces and be governed by the decision of Saskatchewan;

it just would not. So therefore, this is not practical and that leads us into the consideration; "Well, how many areas are there in Canada?"

PROF. CREIGHTON: That is another question. I would agree, I think, that Alberta and British Columbia ought to be made a fifth.

DEAN LEDERMAN: I don't know that we should dismiss Mr. Bennett's proposal too lightly, but I don't know whether he ought to get all the way to the Arctic coast.

PROF. CONWAY: I think this merits very serious consideration. I was astonished to learn about this, which I believe is so, that vast amounts of foreign capital are being poured into the North West Territories. It is true there is the Department of Northern Affairs, but one does not read about it in the papers very much.

DEAN LEDERMAN: Exploitation companies, there is federal public money in it.

PROF. CONWAY: Is it Sunoco which has the tremendous plant up there? Sun Oil Company of Pennsylvania is one and Japan is another.

PROF. CREIGHTON: They are all up there, all American oil companies up there.

MR. STEVENSON: Perhaps we do not need to be discussing too much the question of the territories, but I think what this does raise is the four or five regions concept, which, I think, underlies a lot of other proposals dealing with the

constitution. It has been only faced so far in the discussion when British Columbia has brought it up, but on this one there is no question that British Columbia is quite adamant: it just does not accept a four-region Canada. I wonder if we have any kind of opinion around the table? We have had a couple of expressions.

PROF. BRADY: I think unquestionably the four-regional division is a division that does not conform with the political fact. British Columbia certainly dissociates itself from being part of a merely western region. Mr. Bennett, I think, indicated that clearly enough as recently as the last constitutional conference, and it has been the case for years.

PROF. CONWAY: Indeed he did.

PROF. BRADY: British Columbia does not regard itself as part of a western region in which the three prairie provinces constitute parts -- and for good reasons, I think. It is developing resources in quite different conditions from the prairie provinces, and it has tended to take attitudes on questions often quite different from the attitudes taken in the prairie provinces. The hard, political facts, in other words, do not seem to support really this division.

DEAN LEDERMAN: This is not just Mr. Bennett. This has come through the message of British Columbia for generations.

DR. FORSEY: Oh, yes, absolutely. You cannot even pay a casual visit to the province without recognizing it. They refer to Saskatchewan as the east, and it is a frightful jolt if you came from Montreal or Ottawa.

PROF. CONWAY: What would you say would be the natural areas, Prof. Brady?

PROF. BRADY: I think there are five regions. There is the question raised whether Joev and his province belongs to the Atlantic, but for practical purposes I think all of those Atlantic provinces could be grouped as a region.

DR. FORSEY: Certainly.

PROF. BRADY: Consequently you have five.

PROF. CREIGHTON: What is the fifth? Is it just British Columbia or Alberta and British Columbia?

PROF. BRADY: British Columbia. It is true you are beginning to get some clefts as it were, within the prairies.

PROF. CREIGHTON: You do after the Saskatchewan western border.

PROF. BRADY: You always had some. I don't know that they have become more accentuated. I suppose that is an arguable point. However, the three prairie provinces still consult together and meet together and so on.

DR. FORSEY: Yes.

PROF. BRADY: And feel they have something of a regional interest, so I think you can take that as evidence.

DR. FORSEY: If you took five regions, and supposing for the moment you say British Columbia is the fifth (and I think this is probably the realistic attitude to take) then what do you say about your consensus? Then do you say: "Three out of five" or "four out of five"? There is your next question.

DEAN LEDERMAN: You can construct all kinds of schemes for weighting the regions and what your majorities have to be.

PROF. SYMONS: On the regions themselves, Mr. Chairman, I am certainly sympathetic to the views expressed about the unreality of lumping British Columbia in with the other three provinces west of the Lakes and calling them one district, it is grossly unfair; but probably, as people feel, at least for a while longer, probably another generation, in terms of population and so on it would be pretty hard to sell the rest of Canada on the fact that British Columbia by itself was a district or region. In terms of population, it is what, two or three million?

PROF. CONWAY: Something like that.

MR. STEVENSON: About 2.2.

PROF. SYMONS: Less than two and a half. There is a very appreciable difference between the population of British Columbia and, say, Ontario or Quebec.

PROF. BRADY: There is an appreciable difference between the Maritimes and Ontario.

DR. FORSEY: What is the population of the Atlantic provinces now?

DEAN LEDERMAN: You won't get up to 2.5 million in the four Atlantic provinces.

MR. STEVENSON: No, just about two million.

DR. FORSEY: I would think so.

PROF. SYMONS: That is so, but the fact that it is an existing region with an historical basis -- I am just trying to anticipate the public reaction in this way to British Columbia by itself at the present time. I am just not sure it is politically feasible. I think the rate of growth and so on clearly make it good sense, but it is going to be in line with the facts, ^{and} probably there is going to be another twenty years before it.

PROF. CONWAY: You might not be able to sell the rest of the country on the idea of British Columbia as a fifth area, but you certainly will not sell British Columbia the idea that it is part of the west. That is an equally hard, political fact.

PROF. BRADY: It is the hardest fact,

I would say.

DR. FORSEY: I think it is much harder than the other, because the discrepancy between the population of British Columbia and the population of the Atlantic area is pretty small, I think, and as for history and that sort of thing, British Columbia surely has historically very little in common with the prairie provinces, economically and historically. The way British Columbia came into the federation was a totally distinct process from what you got with the creation of the three prairie provinces by Act of Parliament of Canada. It was a pre-existing colony, a small one but it was there, and it had pretty considerable history even at the time of confederation.

PROF. BRADY: And into the bargain, British Columbia in the development of its resources in the last twenty years has come to have a peculiar position. In other words, it is finding its markets in the south and to the west across the Pacific, and it is utilizing to less extent the trans-continental transportation system.

PROF. CREIGHTON: That is true of Alberta also.

PROF. BRADY: It is coming to be so of Alberta, but I think to a much less extent.

DR. FORSEY: Yes, and the historical factor pulls Alberta rather in with the other prairie

provinces still rather than with British Columbia, I should think. I do not think that the problem of selling this to the rest of Canada should be beyond the wit of a fairly skilful politician.

DEAN LEDERMAN: This is one of the lesser jobs of the achievements involved in this exercise. There is a lot to back this one up.

PROF. CONWAY: Mr. Chairman, at the risk of being tedious, I want to reiterate my curiosity and concern about the other half of the geography of Canada. Is there any way that we can get some information, in a general way, about the investment of foreign industrialists in the North West Territories? I am really concerned about this. I have an idea that something is going on there that is not being noticed, simply because there is no legislature there and there is no representation -- well, there is representation in the Yukon; but that vast expanse up there, I think you were referring to John Diefenbaker's vision of the north.

DR. FORSEY: Yes, quite.

PROF. CONWAY: I must say that he did have an idea there. But if we could get for the Committee a picture of what is going on in that area apart from its 30,000 inhabitants.

THE CHAIRMAN: The staff in economics, I am sure, can put that together.

MR. STEVENSON: Andrew is on his way.

THE CHAIRMAN: We do not have to do that now, Andrew, but I think we can dig that out and prepare the report for you. It would be very interesting.

PROF. CREIGHTON: The information is available surely.

DEAN LEDERMAN: The Carruthers report and its appendices have done geographic and economic surveys.

PROF. CONWAY: Are companies being taxed? Where does the tax money go, and that sort of thing.

PROF. SYMONS: I think it would be very helpful.

THE CHAIRMAN: It would be very interesting.

PROF. SYMONS: May I just say again, Mr. Chairman, that I could not be more personally in sympathy with all the things that have been said about British Columbia, including its rich historical background. I think it is going to be no mean thing within the next generation in twenty years say, to reconstitute arrangements so that it is accepted as a fifth district.

PROF. CREIGHTON: By itself.

PROF. SYMONS: By itself. I think it is desirable, it makes sense, and I think it is certainly the future; but I think there are tremendous difficulties and we need to face them.

One, for example, is that I think the province of Quebec would think very carefully before a reshuffling of our political psychology so that it becomes a fifth instead of a fourth. I think that, to begin with, is a very big question and cannot be lightly glossed over. There are other problems. I am in favour of it and it makes good sense.

DR. FORSEY: There is one other problem about it. Immediately you get into the discussion of possible re-allocation of Senate seats, if you include British Columbia as a separate division here, it is going to say: "All right, the logical implication of this is we get a lot more than six seats in the Senate." Then you may be opening a considerable can of worms, but you may have to open it up.

PROF. MEISEL: If it is to mean anything they should have more than six.

DR. FORSEY: Yes.

PROF. BRADY: They have expressed that view before.

DEAN LEDERMAN: I would like to make the point at this stage that this paper is talking about a formula for getting a reasonable measure of consensus on shared cost programs, federal initiative in provincial areas of jurisdiction. All right, but they have got it all mixed up with the Senate as such and the Senate districts.

My reaction is that it is a dog's break-

fast. For heaven's sake, get the Senate out of it.

PROF. BRADY: It adds complexity to what is already a complex issue.

DEAN LEDERMAN: Get the Senate out of it. The Senate is undemocratic; it consists of appointed persons. The principles of appointment are not defensible at the moment, and this is with all due respect to a handful of senators through the years who have been distinguished people and done good work on the whole. I do not see any proposal that the Senate is going to become a democratic body representative of regions.

Here we are talking about these shared cost programs, and you are getting into them because they are attempts to deal with the very areas where the greatest pressure for social change in policy is -- pollution, education and all the rest of it. You are getting into these very critical areas, and these are the very areas which should be in the hands of the elected representatives of the people, and here we are mixing the appointed Senate into the whole thing.

DR. FORSEY: In paragraph 38 you are mixing it. As far as 36 is concerned, it is merely -----

DEAN LEDERMAN: Merely a weighting device.

DR. FORSEY: Merely a weighting device, but in 38 you get it mixed up with the proposal of

the Government of Canada on provincial appointments to the Senate.

DEAN LEDERMAN: But it is going to take half an hour at least, or more than that, to make the Toronto Star understand that it is not the Senate: it is the Senate districts.

PROF SYMONS: Mr. Chairman, I agree wholeheartedly with Dean Lederman. The discussion
ful
we have had, delight/as it has been, for the last half hour, indicates exactly the sort of things that will happen on a greatly magnified scale when you take the matter out to the public.

In the middle of paragraph 38, do I mis-read it, or is there not actually a more specific suggestion that would not merely refer to the Senate for formula purposes, but would actually say that the Senate would be the body.

MR. STEVENSON: Right.

DR. FORSEY: I think this is hopeless.

DEAN LEDERMAN: There is another point. You start this procedure with a resolution of Parliament. Now, the word "parliament" includes the Senate. That resolution would have to pass both the House and the Senate before anything goes to any province.

PROF. BRADY: Is a more logical approach that of taking the number of the provinces and considering the proportion of the total population of Canada that they represent? In other words,

the Fulton-Favreau formula technique? At least that seems to me to have more reality about it.

MR. STEVENSON: Seven provinces with two thirds of the population?

PROF. BRADY: Yes, I am not committed, but some formula of that kind.

PROF. CREIGHTON: But not this.

PROF. BRADY: Not this.

DEAN LEDERMAN: I have another point about this resolution. They say they are going to start the process with a resolution, and it is the resolution that is going to go to the provinces. Now, if the draft bill that gives the details of the whole scheme is not appended to the resolution, how do the provinces reach a judgment, how does anyone reach a judgment? Is this a one page resolution for a scheme that is going to occupy three hundred pages in the statute book when it is all developed? How detailed is this resolution going to be?

MR. STEVENSON: That was discussed but quite inconclusively, because the whole question comes up about the kind of bargaining that any province will want to do with the federal government before any shared cost program is introduced. Does the bargaining then, as it does now, take place in a context of ten provinces discussing with the federal government, or does it get into the situation where

you have got two provinces short of consensus, and the province that is a marginal one then demands a little extra concession in the program before it will opt in, and the federal government may be so anxious to see the program go through that this kind of leverage could be very important.

DEAN LEDERMAN: That would be fair enough if there was enough detail to start with for the legislatures and administrators of various provinces to make up their minds; but if you just say a resolution, that could be five lines.

PROF. SYMONS: One point I thought of, Mr. Chairman. I think the mechanics that the federal representatives have suggested are enormously complicated, and largely because of the complications they will have in the public mind; but I am interested and really delighted that they have reached out to try and find some fresh approach, and I think they really deserve marks for trying a totally different thing.

THE CHAIRMAN: Yes.

PROF. BRADY: Very interesting, of course, is the admission that Parliament might lose its power to decide unilaterally where a shared cost program ought to be initiated. I think that is a considerable admission.

THE CHAIRMAN: Shall we move along then a bit?

PROF. CONWAY: What about this point
in 38 :-

"If the Senate were to be reformed in
"such a way as to increase the re-
"presentation of provincial interests,
"that is, by the appointment of a
"proportion of the senators by the gov-
"ernments of the provinces"

are we accepting that?

DR. FORSEY: I think that is totally
inadmissible. For one thing, it is far too vague.
Even if the government of Canada's proposal were
accepted on the Senate, you don't know what pro-
portion of the senators would be appointed by the
provincial government. I understand by the grape-
vine what they are calling for is half. Are the
provinces going to buy that and say their half
representation of the Senate can commit them on this
thing? It is preposterous.

PROF. CONWAY: What is the position of
the Committee on what is called here "reform of the
Senate".

DEAN LEDERMAN: I agree with Mr. Robert
Nixon, the liberal leader in this province, that the
best thing you can do with the Senate is to abolish
it.

PROF. CONWAY: You really do?

DR. FORSEY: I don't think you can do that. The next best thing is leave them alone. Some of you have seen my comments on the dominion governments proposals for the reform of the Senate. I think they are a lot of very bad medicine and impractical and foolish. If you add this extra power to the Senate, you are in a worse mess than ever.

I do not think the provinces would take this; I do not think there is the slightest prospect of their doing it. If they got a Senate in which they appointed all the senators, then they might go for it.

PROF. CONWAY: What would you think of that?

DR. FORSEY: I think that would be appalling.

PROF. CONWAY: Why? I have no feelings one way or another. The Senate is ineffective now.

DR. FORSEY: If you get a Senate which in effect has more power, the more power it has the more nuisance it makes of itself. At the present it does some good and very little harm. Any proposal I have ever seen for reforming the Senate would give it in effect more power some way or other, and therefore more possibility of making a nuisance of itself. The best thing to do with it, since you cannot abolish it (I think that is politically

impossible) the best thing to do with it is to leave it alone.

PROF. CONWAY: Do you really think, Dean Lederman, that a unital legislature would be best for Canada?

PROF. MEISEL: Should we be discussing this problem now? I think it is a very interesting question.

PROF. CONWAY: It is in here. We should have an opinion about it. Are we accepting or rejecting this notion?

PROF. CREIGHTON: We are talking about federal government proposals for the form or change of the Senate. That is something different from abolishing it.

DR. FORSEY: In that case it seems to me, I would suggest, that the attitude of the government of Ontario on this particular proposal in the second half of 38 should be: "No, this horse won't run".

DEAN LEDERMAN: I would say we go this far in talking about the Senate on this: get the Senate out of this operation.

DR. FORSEY: Get it out absolutely.

DEAN LEDERMAN: Whatever you do ultimately about the Senate as a second chamber get it out of this operation.

PROF. BRADY: That is another subject.

PROF. CONWAY: The reason I dwell on it is because it seems very clear to me that the reform of the Senate is just embodied in this whole set of propositions.

DEAN LEDERMAN: I say "get it out" because I am an old-fashioned Liberal democrat I suppose. It is an appointed body.

THE CHAIRMAN: You say whatever attitude may be taken in changing the senate, it has no place in this particular function.

PROF. MEISEL: This seems a very wise move to get rid of it here. If the Senate later were to be reformed (and I use that with quotation marks or without) you can always come back and give it some responsibility here if you want to, but I think it is most unlikely you would want to.

DEAN LEDERMAN: Take a second look.

PROF. SYMONS: Mr. Chairman, I am somewhat between Prof. Conway and Prof. Lederman on this. I think the difficulties of having the reference to the Senate have been indicated by our discussion. We have demonstrated the instantaneous confusion which arises from that.

The thing that one cannot ignore (and I agree this is not the time to discuss it) is that I would sense that in connection with this, coming through this in a number of ways in this paper, is that the government is considering, as a major

instrument in its approach to re-structuring the federation, the use of the Senate.

PROF. CONWAY: Precisely.

PROF. SYMONS: At some point we had better talk about it.

DEAN LEDERMAN: It is in their White Paper.

THE CHAIRMAN: I think this is again a matter of the mechanics of procedure. There is no doubt that the federal government has plans afoot for the Senate, and this presumes something about it, but again I think, agreeing with what you say, Tom, it is perhaps fair to say, on the other hand, also that it is a little difficult to know whether you want to use the Senate in this particular context without knowing what the Senate is to be as an institution. I don't think this should preclude us from coming back at this.

DEAN LEDERMAN: One other comment that may be worth adding on this when we are talking about political realities. The federal Liberal party is seriously divided on the proposals about the Senate.

DR. FORSEY: I think that is perhaps putting it mildly, judging from what I have heard from the grapevine. Now that I am a Liberal I can hear things from the Liberal grapevine.

(laughter)

PROF. BRADY: What grapevine are you
in on?

THE CHAIRMAN: Do you hear this from
the white grapes or the red grapes?

PROF. CONWAY: My point, Mr. Chairman,
is that I think it is quite clear there is a political
theory behind these propositions, and the propositions
are put forward as sort of matter-of-fact measures;
but if you are just going up to page 13 it is quite
clear to me that the elements of a political theory
are becoming clear.

DEAN LEDERMAN: I am sure you are
dead right, and that is why I am starting to rally
to the liberal democratic flag.

PROF. CREIGHTON: I think that is right
because it is spelled out.

DR. FORSEY: We might wave the liberal
democratic flag in an Australian version and talk
about an elected senate, but I don't think this is
the place to do it.

THE CHAIRMAN: What about the liberal
social democratic party -- LSD? (laughter)

PROF. CONWAY: Of course, this Senate
suggestion is the American system before -- when
was the amendment?

MR. STEVENSON: I think it would appear
that there is at least some kind of majority opinion
up till and including 38.

Would there be any problem with 39? 40, I think there is agreement that it should be "provinces" rather than "people". 41, is I think, a rather minor point here which is not necessary to the federal argument. Would there be any objections to it?

PROF. SYMONS: Mr. Chairman, in 40 why did we agree it should be "provinces" rather than "people"?

PROF. CREIGHTON: Because everybody has assumed it would be impossible.

THE CHAIRMAN: I would not say there was a unanimous view or even majority.

PROF. CREIGHTON: No.

THE CHAIRMAN: There would seem to be a prevailing opinion, shall we say.

MR. STEVENSON: I counted a majority.

THE CHAIRMAN: Did you count a majority?

PROF. SYMONS: It would be just chaotic.

PROF. CREIGHTON: True, but it would be nice.

PROF. SYMONS: I just wanted to look at it.

THE CHAIRMAN: A majority of hands against a strongly expressed minority.

DR. FORSEY: We have around here two conservative nihilists. (laughter)

PROF. CREIGHTON: Well, they get there now with the children's allowances.

THE CHAIRMAN: You really rejoicing
in your new-found political Coloration, Eugene.

DR. FORSEY: 42 would go down the
drain.

THE CHAIRMAN: Yes, as part of the
deal.

DR. FORSEY: 43 likewise.

THE CHAIRMAN: Yes.

PROF. CREIGHTON: Yes.

DEAN LEDERMAN: These are consequential.

THE CHAIRMAN: I think that is about
the essence of the paper.

DEAN LEDERMAN: 45 is of some importance.

DR. FORSEY: Yes.

DEAN LEDERMAN: 45, you move into
regional schemes and you don't do anything about
regional consensus.

THE CHAIRMAN: Yes.

DEAN LEDERMAN: I suppose there is no-
thing wrong with that; it is going on now.

PROF. MEISEL: You are thinking of
the Montreal region as distinct from the Quebec
region?

MR. STEVENSON: Just before we get to
45, I wonder if anyone would like to consider for a
second the proposal that you made, Ian, at the last
meeting, that one might consider, if the federal
government did not want to make payments back to pro-

vinces, that what should be done in such cases is that you have a portion of the tax field at least deemed to be directly for that shared cost program, and you just do not collect it and the provinces are not going to levy the particular program.

DEAN LEDERMAN: Points on the personal income tax.

MR. STEVENSON: Yes, it pretty well has to be then tax on persons.

THE CHAIRMAN: What I said is simply this, that you start from the assumption that the federal government was going to spend for people rather than provinces or programs; that they would collect money only from the people in those provinces that were participating in the program.

My point is; why collect money from the people -----

MR. STEVENSON: And then give it back to them.

THE CHAIRMAN: And give it back to them through all this costly process? It is true you might give it back to them in a way which effected a certain re-distribution of income among people in the province. There are other ways of effecting the re-distribution of income that are less cumbersome.

So you would simply say; "Those provinces who agreed to participate" and then you tax for them.

If you say: "Well, part of the purpose of this program is to re-distribute income between regions", that is, equalization or other means, then you do that through your equalization formulas. You also do that directly; you do not do it indirectly through means of this program. So you simply tie the federal spending directly to the levying of money and the spending of money in the provinces which participate in that program, and you get rid of all this horrendous administrative complication and cost of collection and remission plus all the wrangling about it.

MR. STEVENSON: The federal people have said to that, they did not think it was possible to determine that the federal government must use a tax on persons to pay their shared cost programs.

DR. FORSEY: Surely the argument arises there -- and I suppose this would apply more to the corporation but indirectly to the personal income tax figures in Ontario I should think -- that a considerable amount of income comes indirectly from other parts of the country.

MR. STEVENSON: But there are formulae worked out for sharing of revenues in all the major fields among the provinces which have been agreed.

Our first position anyway was that the money should go back to the provinces. This was

just a secondary position if the federal government was insistent.

DEAN LEDERMAN: You could actually do it on the existing income tax form.

THE CHAIRMAN: Yes.

MR. STEVENSON: Sure.

DR. FORSEY: It is not so much that you just do not collect the stuff. Surely what they would get would not necessarily be what they would have collected from. I thought the idea was that the non-concurring provinces would get what they would have got under the plan. This might be quite different from -----

MR. STEVENSON: If you had a built-in equalization formula then this proposal would eliminate it.

THE CHAIRMAN: I think the problem they feel about it is the differential tax problem. They would say: Supposing six provinces are in Program X and four out. Let us say the income tax rate in the six provinces that are in is effectively 1% more than it is in the provinces that are out, in order to provide the federal cost of that program. They would then say: "You have in effect thereby created a differential tax rate in the different provinces".

There are a couple of answers to that. First of all, ~~de~~ facto, if you are returning the

money you have created a differential treatment, although it is a little different perhaps from the differential rate problem.

The other way of looking at it is that you can do it not by a differential rate but you can do it by something like the social development tax -- really a tax premium. It all depends on what the program was. If it were a kind of program such as hospitalization or Medicare, it would probably be done by a tax premium. If you then say that the tax premium would be regressive because it would impose on people uniformly regardless of income, my argument to that was that in that case you come at the progressivity problem by reforming your income tax system, make it more progressive.

DEAN LEDERMAN: I am afraid they would say that if you pay the governments of the provinces, they will adjust their taxes.

THE CHAIRMAN: This is the other point, and what we did say, why we thought it was a matter of being preferable first of all just to repay it to the provinces because then the provinces -- well it depends on what they do about their internal tax system; we would expect to have the mechanism at some point to be able to handle this very nicely, because if we want to make a more progressive income tax in the province and have a system of tax credits for

certain income groups, retail sales tax and property taxes and so on you could simply have another part of your tax credit in the provincial system.

This takes you into the mechanics of taxation, which is another subject, but what I was really doing, frankly, in putting that proposal forward was to try to test whether the federal government felt that they were on to a nice political wicket, that is, sending cheques back to people. I wanted to see whether this was the motivation behind it or not.

DEAN LEDERMAN: There was a great tussle when the family allowances first came out. Didn't the people in Quebec get letters both from the Minister of Welfare and from Paul Martin too.

THE CHAIRMAN: That is right.

DEAN LEDERMAN: "I am sending you a cheque".

PROF. CONWAY: As far as re-distributing the wealth is concerned, Mr. Chairman, my imagination is very poor in this area. What sort of cheque would people get, as high as \$50 ever?

THE CHAIRMAN: It depends on the program. Let us take the most expensive one that could be Medicare, and let us say there would be \$175 million coming back to the people of Ontario. \$175 million over seven million people is an average of \$25 per capita. That would mean that an individual, if this

were done uniformly across the board, would be getting a cheque for \$25 , or a man with a family of four would be getting a cheque for a hundred dollars. That is a very expensive shared cost program, but supposing it were bud worm control or whatever, it might be .002 cents.

DEAN LEDERMAN: I would not want to be trying to either get in or out of the beer parlour the day the cheques were received.

THE CHAIRMAN: The other question is that we have got to look ahead (and this is the interesting thing) as to what might we be talking about in the future? We have hospitalization now and no province is going to get out of it; we are all going to be in Medicare sooner or later (it is obvious) and no province is going to be out of it. The big things are done.

Now we ask: what are the vistas for these new program inventions? Are there great big programs of this kind likely to be available, or they likely to be more special, smaller particular jobs? If not, are we arguing about something ex post instead of ex ante?

PROF. CREIGHTON: Do not forget that guaranteed income.

THE CHAIRMAN: Yes, that could tie up except that is again more likely to perhaps lead us away from share cost programs into a kind of single

national income base through the income tax system.

MR. STEVENSON: A couple of federal people gave this kind of answer to that general question. They said they felt that if this kind of limitation were built in, there might be less predilection by the federal government to use the shared cost program device; but insofar as they did use the shared cost program device perhaps the main area where it would be used would be in the economic field, perhaps urban transportation, this kind of thing.

DEAN LEDERMAN: I don't think we are at the end of these things at all.

MR. STEVENSON: No, but the guaranteed income, the thing is they would not use the shared cost device for that but do it through the tax system, and this would be the next step in the whole social security field.

DEAN LEDERMAN: The reconstruction of the urban environment involves the inter-action of several exclusive federal or provincial powers -- air, water and land pollution. There are all kinds of big things ahead.

MR. STEVENSON: Those would be the fields where that would come up.

DR. FORSEY: You might even conceivably sometime in the future get into the field of education.

DEAN LEDERMAN: This is important too. In fact we are in shared cost programs in education now.

DR. FORSEY: There might be more conceivably.

DEAN LEDERMAN: Yes.

DR. FORSEY: Because there are certain signs that the English-speaking provinces are getting the bit in their teeth on this thing.

DEAN LEDERMAN: On education, yes, and straight forward federal roles in it.

THE CHAIRMAN: I believe lunch is going to be ready in a moment or two, and I think perhaps we could come to a breaking point here on this paper in the interest of getting along. We have had a very good discussion of it. We go on to the taxing power.

MR. STEVENSON: I would suggest, Mr. Chairman, we might dispense a little time right next, rather than on the taxing power, on the possible Ontario paper, because then one can build in some of this discussion on the same topic.

PROF. BRADY: I think, Mr. Chairman, that would be a good suggestion.

MR. STEVENSON: Mind you, we have to limit the time.

THE CHAIRMAN: Yes, and I was going to suggest we break for an hour or so. I am going to have to slip away over the lunch hour, and I shall be back about quarter or ten to two, but I did not want to detain the discussion or lose time. I would rather like to be here for the Ontario paper, Don.

So if people do not mind carrying on with the taxing paper, then we can use both as background to the spending. I think there is some connection there as a matter of fact.

Bill, if I am detained a few minutes, do you mind taking the chair, and Don can lead the discussion through the taxing paper. Shall we say we will resume the formal discussion at quarter to two.

MR. STEVENSON: If we are all here, it could be earlier than that.

THE CHAIRMAN: If everyone is ready to go earlier, all right. I shall be back between quarter to two and two anyway.

----- The Meeting adjourned from 12:25 p.m. to 1:30 p.m.

THE CHAIRMAN (Dean Lederman): The Chairman wants to be here for the provincial draft on the spending power. Until he comes and resumes the Chair, the suggestion is we start on the second federal paper here on the taxing powers in the constitution of Canada. Perhaps again, Don, you could pin-point for us the problems you think we could help you with.

MR. STEVENSON: On this one we had the best part of a day's discussion, I guess, in Ottawa. I do not think the issues were joined quite as well as they were on the spending power, because on the spending power there is a much clearer division of

interest between some of the provinces and the federal government.

The federal people said, when they were introducing their paper, that their taxing power paper attempted to deal with the central issues that the provinces and others had raised recently. They firmly rejected at the outset the concept that it was possible to accurately forecast revenue and expenditures over a long period of time, to define a gap and then share tax fields by specific abatement, or either that or by giving the provinces one set of taxes to cultivate and the federal government the other.

Central to their whole paper is the principle of access; that you have a large number of tax fields which each level of government has an access to. They felt very strongly that the federal government should be permitted to keep its current, pretty well unlimited tax powers. They said they did not imagine that the federal government would be getting into the question of property taxes, but they did not want to close the door because they could see the possibility where this might have come up in certain circumstances. Therefore they rejected the Quebec proposition that each level of government be restricted in some way on the tax sources that it could cultivate. They said that they tried to go as far as they could towards meeting the provincial position that the provinces should have access to a greater number of tax sources than

they now have (in other words, some were in the indirect field) but they felt that the national interest should overrule any large degree of provincial cultivation of indirect tax fields.

I think if we get into page 4 we will see their basic position. In paragraph 12, the one that is underlined, is the basic federal position: that the basic limitations on the broadening of provincial tax powers should be that, first, the present constitutional protection against inter-provincial customs duties and tariff barriers must not be weakened in any way; secondly, the present constitutional protection against the taxation by one province of persons or property in other provinces and/or against the taxation by two or more provinces of the same income or property must at the very least be maintained.

"Indeed, any changes in the taxing powers
"ought to be designed to increase the
"constitutional protection against these
"possibilities."

Finally

"The extension of or change in provincial
"taxing powers should not have the effect
"of limiting the taxing powers of the
"government of Canada".

Then they go into quite a lot of description of what they think the impact would be of

provincial incursions in the indirect field, and they take the conclusion that any indirect provincial tax, other than the retail level, could not avoid but result in some kind of implicit tariffs or the taxing of persons or property in one province by another.

They then suggest that it might be possible to have an indirect retail sales tax, but that this would have to be limited again very sharply to prevent the possibility of implicit tariffs.

THE CHAIRMAN (Dean Lederman): This is scheme A on page 8.

MR. STEVENSON: That is right. They have two specific proposals here for getting around the implicit tariffs.

THE CHAIRMAN (Dean Lederman): The point about confining it to the retail level, which is the sales tax type of thing, is that you are there dealing with the consumer and he is in no position to pass it on, and therefore tax either people or property in other provinces. If you tax manufacturers or middlemen, it will be passed on to consumers in other provinces on any goods that are exported from one province of production; and you start causing differences in the cost of production, in the cost of doing business in the various provinces, you start balkanizing the economy and you are on a slippery slope.

MR. STEVENSON: Perhaps I could bring up some arguments that were raised during the discussion, particularly by some of the provinces. One (and this is one, I think, made by Ontario at the outset) was that there was general agreement with the aim of the federal paper that we by all means should not in any way have direct or implicit tariff barriers between provinces; that the way it is now this is possible not only through indirect taxes but also through direct taxes. With all provinces having equal access to corporation income tax, it is certainly quite possible to imagine a frankly discriminatory direct tax that a province could levy which would have somewhat the same impact as the indirect tax problems which the federal paper points out.

Similarly, you can have effective tariff barriers through such activities as provincial government purchasing policies. We have been having a bit of a debate on this one recently.

Another thing that the Ontario delegation brought out was that we have to consider that the taxing power is a means and not an end, and that taxation really is for two items: both the independent effect on the economy, on the re-distribution of income and the rest, that taxes can have, and secondly, the use of taxes to pay for the expenditures; and that we should have, either through machinery or through

some device, a means of trying to get some general relationship between revenues and expenditures at the two levels of government; thirdly, that we must try to achieve as much harmonising in taxes between the federal government and the provinces as possible.

We may find that technological and other changes that have taken place in recent years, may mean that one does not have to have the same emphasis on total uniformity of taxes as sometimes has been believed to have been essential; that specifically Ontario had been proposing a joint federal-provincial tax collection agency. Some of the possibilities involved in this would be, in the personal income tax at least, a situation where instead of having each individual, in a sense, on his tax form assess his own tax -- which has been a source of headache to millions of Canadians, I guess, this year, when they got through all the deductions and the provincial tax payable and the federal tax payable and the surtax and so on -- what is possible is that each individual in the country could send in to a central tax collection agency perhaps a card listing all the various sources of his income sufficient to provide the raw material for a calculation of both the federal and the provincial tax; and then have, in the central agency, this card being fed through two computer programs -- one, the calculation of the federal tax and

the other the calculation of the provincial tax for the province in which he is resident. Then you come out with the central agency doing the actual assessment. This would permit the possibility of some variation in the tax base of the personal tax between the central government and the provinces, without the necessity of having two separate collection agencies which is, I think, the accepted wisdom now. That was part of the Ontario position.

I think one other point I might make is that the B.C. position, of course, was that there should be a clear separation between the taxes which the federal government could levy and the types of taxes the provincial government could levy; and that in particular we could get away from this problem of implicit tariffs by keeping the provinces out of indirect taxes, but giving them an exclusive right in the direct fields. This is pretty extreme for almost anyone.

As to the smaller provinces, here is Nova Scotia saying that surely occupation is more important than access. You can say to an elephant and a mouse that you have equal access to the food, but it does not mean that the sharing is going to be equitable.

Certainly I think you found that among most provinces there was a general acceptance of the principle of access, but along with it there was a very strong feeling that there should also be a concept of

sharing, if not the formal abatement system, at least some means of dividing joint fields so that you have some relationship between the expenditure responsibilities and tax powers, presumably by some kind of periodic review and forecast of gaps and some system of dividing the field according to responsibility. The federal government has been saying, of course, that we have to get away from this; that any attempt in the past accurately to forecast the future revenue responsibilities and a gap has been really doomed to failure, and that the responsible government should make its own decisions rather than having decisions made for it by some kind of inter-governmental commission.

There was a good bit of debate as to, if you did have some kind of inter-governmental commission, either to attempt to arrive at some kind of tax-sharing or collecting, could it be a decision-making body? Could it be a recommending body or solely a consultative body? The federal people were saying that even a recommending body in tax-sharing would be a little bit awkward, because even this takes away from the power -- legislative supremacy, I suppose.

MR. POSEN: "Politically unacceptable" was the term.

MR. STEVENSON: Another point Rendell Dick was making was that he was feeling that you

should have in the taxing power as broad access as possible by each level of government; and if it came to a question of an implicit or direct tariff, that this should be something for a court to decide. He said he had an aversion to doing things indirectly which you should do directly; what you should do is express in the constitution unlimited access to taxing power and then lay down firm principles as to a prohibition of any form of tariff.

PROF. BRADY: Would he have some special court or any court?

MR. STEVENSON: He did not develop this into the machinery, but I assumed there would be some kind of a reference perhaps, a testing.

THE CHAIRMAN (Dean Lederman): It would have to be the ordinary courts, I think. With everyone a taxpayer you have to use the ordinary courts.

MR. STEVENSON: Maybe that is enough to get started on. We had quite a long discussion.

THE CHAIRMAN (Dean Lederman): Paul, you had a point.

PROF. FOX: I have several points I would like to raise. The first one is a question, Mr. Chairman, and I do not think it was clear to me from reading this, why the discussion at one point was revolving around the desirability of having an indirect retail sales tax for the province as opposed to the present power the province has to exercise a direct sales tax.

What is the advantage of this proposed change?

MR. STEVENSON: The Carter Commission Report, you may remember, recommended that the current manufacturing sales tax at the federal level be abolished, and that it be combined with the provincial tax into one tax on sales. I think it implies that this tax be an indirect tax at the retail level; that it would then be the main source of revenue to the provinces and local governments.

Over the years the various provinces, certainly including Ontario although I think it has not been the case for about nine years -- you notice in appendix C;

"in 1960 the Ontario government suggested
 "a constitutional amendment which would
 "empower the province to levy indirect
 "retail sales tax, and the Government of
 "Canada agreed providing the provinces
 "were prepared to support such an amend-
 "ment unanimously. The governments of
 "Alberta and Quebec rejected the proposal,
 "Quebec on the ground that the whole field
 "of indirect taxation should be open and
 "up to the provinces"

I think there are really two or three arguments. One is that an indirect tax is hidden.

PROF. FOX: The present one is pretty

hidden though, is it not?

MR. STEVENSON: No, no, not when you

THE CHAIRMAN (Dean Lederman): I think the important thing is to leave it at the retail level. Direct and indirect in the sense of the Carter Report (leave John Stewart Milne out of it) just goes to the method of collection. You would simply take the retail vendor and say "You are the taxpayer".

MR. STEVENSON: "Give us five percent of your sale".

THE CHAIRMAN (Dean Lederman): "Give us five percent of your sales".

MR. STEVENSON: It is much easier to collect.

PROF. FOX: That's all that, but I wondered if that is all there was to it.

THE CHAIRMAN (Dean Lederman): That is all that there is in it.

MR. STEVENSON: This is the basic thing. It becomes a very simple tax to collect.

THE CHAIRMAN (Dean Lederman): That is all there is in it; that is the difference between a direct retail sales tax and an indirect retail sales tax.

PROF. FOX: That is my question.

THE CHAIRMAN (Dean Lederman): From

the point of view of economic effect, the heart of the matter is retail sales tax.

MR. STEVENSON: Right.

THE CHAIRMAN (Dean Lederman): This use of the word "direct" and "indirect" just goes to the method of collection.

MR. STEVENSON: You get quite an argument, implicit, I think, in the federal paper, that say, the current direct sales tax of the province being applied now to production machinery can be considered in economic terms almost to be an indirect tax.

THE CHAIRMAN (Dean Lederman): Yes.

MR. STEVENSON: Although the method of collecting is direct.

THE CHAIRMAN (Dean Lederman): You get into the difference between durable goods and non-durable goods.

MR. STEVENSON: Right.

THE CHAIRMAN (Dean Lederman): Any retail sales tax on durable goods, such as automobiles; you know most automobiles are re-sold at least once, if not twice in their life-time before they reach the junk heap. But you might as well simplify the mode of collection, and that is all there is in this distinction, I think. However, if you ~~once~~ start taxing middlemen or manufacturers, then you are into the erection of tariff barriers. I think the European Economic Community

has discovered this. The turn-over tax is quite common in Europe, is it not, starting with the manufacturers, and they have had an awful time in the European Economic Community.

PROF. CREIGHTON: There may be a simple objection, but would there not be some form of tariff discrimination if that was levied indirectly?

For example/

(Page 103 follows)

For example, suppose the Province of Ontario had a percentage smaller than that of Quebec: you would buy an automobile in Ontario rather than Quebec.

MR. STEVENSON: That is the situation that Professor Brady was referring to.

PROFESSOR CREIGHTON: Yes, I know; there is in any case a certain amount of it.

THE CHAIRMAN (DEAN LEDERMAN): You have your finger on one of the great difficulties with the present retail sales tax. It hits the border areas very hard, such as Ottawa-Hull. The Quebec sales tax is 8 per cent, but the Ontario sales tax is 5 per cent. Who in Hull is going to buy a washing machine in Hull? They can save 3 per cent by crossing the river.

MR. STEVENSON: Technically speaking, there are arrangements among the provinces that goods sold in one province for use in the other should be taxed at the rate of the province of the recipient, but these are very very difficult to enforce, particularly if a car is driven across the border rather than being shipped.

THE CHAIRMAN (DEAN LEDERMAN): They can enforce it in the automobile area because there is in each province a very strict registration system on automobiles, and the whole history of the vehicle has to be straight in the records of the province where you are trying to get a

licence. So that is the one thing they can control, but all other ---

PROFESSOR CREIGHTON: All other things, not.

THE CHAIRMAN (DEAN LEDERMAN): The trouble is, under the present system if I went to Montreal and bought a suit and paid the 8 per cent on it, paid cash and came back to Ontario with it, if I were to obey the Ontario law I would then report to the nearest Government of Ontario sales tax office and pay the Ontario 5 per cent, so that I would end up paying 13 per cent. In other words, it has cost me 13 per cent to shop in Quebec. As a resident of Ontario it has cost me 13 per cent to shop in Quebec, if I am perfectly honest all the way through. If I shopped only in Ontario it would have cost me just 5 per cent and if I shopped only in Quebec as a resident of Quebec it would have cost me 8 per cent. In other words, there is a 3 per cent tariff there.

PROFESSOR FOX: But, Bill, is that not overcome by the provision that goods purchased in Quebec, in your example, can be shipped to Ontario free of the Quebec tax though, under the law as you mentioned, you still have to pay the Ontario tax if you were entirely honest?

THE CHAIRMAN (DEAN LEDERMAN): Strictly speaking, that would only work on a mail order or telephone order.

DR. FORSEY: It used to work on other

things too. You went to Montreal and you bought something in Morgans ---

THE CHAIRMAN (DEAN LEDERMAN): And had them ship it.

DR. FORSEY: Yes, and they went out without Quebec sales tax.

THE CHAIRMAN (DEAN LEDERMAN): This is because the Quebec sales tax law allowed that exception for the sake of their merchants. They did not have to allow even that exception.

DR. FORSEY: I don't know whether that still holds.

REV. DR. MATTE: Yes.

PROFESSOR FOX: I think it holds under present Ontario law, that if you bought something here and shipped it to another province it is not subject to the Ontario sales tax. Am I not right?

THE CHAIRMAN (DEAN LEDERMAN): But it cannot be delivered to you here.

PROFESSOR FOX: That is right.

THE CHAIRMAN (DEAN LEDERMAN): It has to be put in the parcel post.

PROFESSOR CREIGHTON: My point is simply that all forms of sales tax, direct or indirect, do make some kind of tariff discrimination, do they not?

THE CHAIRMAN (DEAN LEDERMAN): Your point is, in my view, very well taken. You have got a

problem every time there is a difference in the rate of sales tax.

PROFESSOR CREIGHTON: As long as the provinces do it, there may be differences.

THE CHAIRMAN (DEAN LEDERMAN): Unless they start into the kind of inter-provincial agreements that are described here in parts of this paper.

PROFESSOR FOX: But there are many different aspects to this. Obviously if a province subsidized an industry which was selling products country-wide, it could be argued that that was a form of tariff, reverse tariff, that is, to the domestic industry in its exports to other provinces.

THE CHAIRMAN (DEAN LEDERMAN): The county of Prince Edward says to a new factory: "You are tax-free for ten years on your real property." I think there is a fair amount of tolerance for some differentiation, but it is a matter of holding the thing down to a minimum level. You are always going to get some differences of tax levels.

DR. FORSEY: You really cannot prevent a province, or a municipality for that matter, from handing out bonuses of one kind or another for this, that or the other industry.

MR. STEVENSON: Ontario law now prevents some of the things that municipalities used to be able to do to attract industries -- fixed assessments, things like that.

DR. FORSEY: But you cannot prevent a province from offering a subsidy to some industry, can you?

MR. STEVENSON: No.

DR. FORSEY: Not that I know of. If the Province of Ontario wants to give a bounty to somebody for discovering or developing a particular resource, it is perfectly free to do so, so far as I know.

THE CHAIRMAN (DEAN LEDERMAN): But on the retail sales tax itself, if you limit it to residents of the province and the deliveries in the province, that is one way; but of course if you did that no-one in Kenora would ever buy a car anywhere but in Winnipeg.

The other types of agreement here look more fruitful, that you pay the tax in the province where you buy the thing and your tax is forgiven in the province where you reside, if that is a different province. If the provinces could agree to that, you would be out of trouble.

MR. STEVENSON: Would it be possible, Mr. Chairman, to have a very brief discussion of the principles of the federal paper starting with paragraph 5, we will say, where we have the difference in concept between the attempt to predict the physical requirements of the two orders of government -- this is at the top of page 3 -- and

then allocate the several sources of taxation in accordance with these needs; or to give both levels of government broad and overlapping powers of taxation, with the objection of enabling them to cultivate these fields as required.

THE CHAIRMAN (DEAN LEDERMAN): The British North America Act from the start accepted the idea that you could not match tax sources exactly to governmental responsibilities, and the provision for unconditional subsidies is in the Act from the beginning, transfer payments out of the federal tax harvest. Personally I agree with the federal position here, but there may be different views.

PROFESSOR FOX: My impression, having read it over, was that the federal government's argument was very tendentious. In other words, they have taken up a position and then they looked for grounds on which to support it. I have to admit that any counter-argument would probably do the same thing. So it is really a question of which premise you choose, and they have laid out on page 3 at the top the two assumptions on which one might proceed, and I suppose it is just a choice.

I would like to know whether their dismissal of the first assumption is as valid as they imply it is. In other words, they say it is really pretty impossible to determine what the needs of the respective governments will be, and, therefore,

since you cannot predict fiscal requirements, let us drop that option. Now, is that true? I would have thought the problem is that people would be only too ready to predict their fiscal requirements, that you would get an excess of requirements, and then you would have to rationalise the requirements, so that it would become a bargaining procedure as to what the priorities were.

MR. STEVENSON: I think Ontario and the other provinces have been arguing very strongly the last two or three years that if longer-term fiscal planning by governments means anything, then it should mean that the various governments are in a much better position than they were before to be able to forecast their expenditure requirements, and that what you do get then by putting these together in some form of regular review procedure should be a discussion about priorities; and that unless we move towards this kind of thing, we are back into a position of conflict and power struggle where it is often the stronger taxing power that may determine the actual expenditures or the priorities.

PROFESSOR FOX: Then it is not so much a question of determining fiscal requirements (you can do that) but it is a question of what to do with the excess of fiscal requirements.

MR. STEVENSON: Yes. Then I guess you run

up against the position of: can you have some kind of continuing federal-provincial body, or maybe ministers, could you have them in effect making decisions for individual legislatures? You may not have to, but could you even make recommendations?

PROFESSOR BRADY: The paper seems to go pretty far in this argument, does it not? It would, as I gather, by implication reject even the effectiveness of the Tax Structure Committee.

MR. STEVENSON: Yes.

PROFESSOR BRADY: In other words, it writes off something that it has agreed to earlier -- perhaps reluctantly agreed to, am I right?

MR. STEVENSON: I think to quite an extent. Certainly we found at the Monday meeting when we were talking about this in a very practical sense and the forthcoming meetings of the Tax Structure Committee, that the federal people were arguing strongly that the federal position of 1966 still held: that you cannot expect the federal government to raise money for the purpose of turning it over to the provinces through abatement; that it would be a useful exercise for both levels of government to put in a joint forecast of their expected revenues and expenditures, but that the main purpose of this would be to allow each level of government then to be conditioned by this general background in their own decisions, but that we would be idealistic or

would be unrealistic anyway to expect that the results of this exercise would then be some kind of sharing of revenues.

One of the reasons they would say, I think -- and this has been used by the federal people to cast doubt on the original Tax Structure Committee exercise -- is that the kinds of conditions you have to build into any forecast may get you into a position where you rule out decisions that the people of Canada may decide are in the best interests of the country; and the Tax Structure Committee forecast the federal government ruled out as being unrealistic because it did not include a change in payments under the Old Age Security plan, the additional payments for old age pensioners under the age of seventy, two or three programmes that were introduced in 1965 -- 1966 after the cut-off date for the projections, which added a couple of hundred millions to the federal expenditures just before the results of the projection exercise were published. So I think they felt very much that their interests had not been served by the first exercise, and that the same kind of thing was very likely to happen on subsequent occasions.

DR. FORSEY: It could very easily happen if you get pressures of the kind that the labour leaders have been trying to exercise. They calmly proposed in their interview with the

government this year (in spite of the parenthetical warning from me) that Old Age Security payments should be boosted to \$125 a month which, on a very simple arithmetical calculation, I think, would have increased the expenditures of the government of Canada by something like a billion dollars. Even if you do not get as far as that, you may get considerable political pressures to increase things like Old Age Security payments, which would throw your projections, I should think, quite wild.

THE CHAIRMAN (DEAN LEDERMAN): Still, is it not possible to forecast within broad limits and be able to say that broad limit forecasts indicate that the provinces need to have more room made for them in these fields to which both have access?

DR. FORSEY: How far ahead?

THE CHAIRMAN (DEAN LEDERMAN): I presume that when they say "move all the sales tax at retail level" that means taking the 11 per cent federal sales tax off at the manufacturers' level, does it not?

MR. STEVENSON: This is the Carter Commission; this is not the federal government.

THE CHAIRMAN (DEAN LEDERMAN): If that were done and the provinces were allowed all the retail sales tax revenue, this would be a pretty big item, would it not?

MR. STEVENSON: It would, except the Carter

Commission again said, "This would then be the major source of revenue for the provinces, but it would still have to be divided".

The other problem about the Carter recommendation to the provinces is that the sales tax, whether it be at the manufacturers' level or at the retail level, direct or indirect, is a tax source that grows only in line with the economy, its elasticity is "one"; whereas the dynamic source of revenue is the income taxes, and if you had a continuation of the trend that provincial-municipal expenditures grow more rapidly than economic activity and that federal expenditures grow about the same rate, then you would have a federal taxation system centred on income taxes with an elasticity greater than one, and a provincial tax system with an elasticity lower than its expenditure responsibilities. So you would have a series of tax cuts at the federal level, and a series of tax increases at the provincial level, unless you got into a whole series of new shared cost programmes or federal grants to provinces.

PROFESSOR FOX: On this point about options, is that not an improper argument from the Ontario quotation in paragraph 9?

MR. STEVENSON: Yes.

PROFESSOR FOX: It seemed to me a very peculiar argument at that point.

MR. STEVENSON: Does the second sentence follow the first logically?

THE CHAIRMAN (DEAN LEDERMAN): Yes.

PROFESSOR FOX: It seems to me the Ontario statement leads directly to option 1, not 2; and Quebec is clear enough (I think they have quite properly used the Quebec argument) but Nova Scotia could be used either way, too, it seems to me. The Nova Scotia quotation does not necessarily have anything to do with either option, or at least could be related to both options, is another way of putting it. That is why I said the argument seemed to me to be tendentious.

I am not convinced, for instance, by their argument about the sovereignty of Parliament. I think the realistic appreciation of this is that governments determine the tax policies of the jurisdiction, and so long as they have a majority and can maintain it in their legislature, then the argument about the sovereign right of the people's representatives is a pretty specious one.

PROFESSOR BRADY: Sounds better, though.

PROFESSOR FOX: It sounds much better, but I was not as convinced by this paper as I was by the first paper on the spending power. I thought it was a much more judicious and impartial appraisal, but I do not mean to fault them on that, because it seems to me from whichever point you

begin, you begin with an assumption that is going to lead you to the conclusion you want, so that it is just a question of which you choose.

MR. STEVENSON: One thing that did not come out clearly, that I think is still a possibility, is to take option 2, which is equal access, and then have a shared within joint fields.

PROFESSOR FOX: A shared, determined by what, agreement?

MR. STEVENSON: Agreement, or by some means.

PROFESSOR BRADY: Achieved by some body?

MR. STEVENSON: Well, let us say the abatement system, I do not think, is necessarily ruled out by option 2. Option 1 states in its clearest terms that you divide the tax fields by having one tax field given to one level of government, and another tax field to the other; whereas I think the Ontario position, and the provincial position taken as a whole recently, has been that you should have shared fields but you should have a mechanism for the sharing of the fields that puts the revenue somewhat in line with the expenditures rather than "to each his own and tax as much as you want".

THE CHAIRMAN (DEAN LEDERMAN): I think the only way I can see out of it is detailed inter-governmental agreements and perhaps some kind of a code or ground rules for these agreements. It

fits in with the whole shared cost thing then; more of a code of ground rules for these agreements than you have had before, that they have a three-year or five-year term and that you can enforce them; that you cannot have one government backing out of agreements and cutting expenditures that it had agreed to make, and so on. You could codify and formalize this to some extent and have a review every three years, every five years, and some of your adjustments would be post-audit adjustments. You would get around the difficulties of forecasting that way.

PROFESSOR BRADY: The paper is quite critical of any idea of having, tax commission or a tax structure committee that would undertake the task of making this review, carrying out this review and submitting to the governments. That is the general impression I get from my very hasty reading. I wonder whether their position is really valid there, because there are many modern governments that have these bodies in Europe, and they are not uncommon. Was this discussed?

--- Mr. Macdonald rejoined the meeting and assumed the Chair.

MR. STEVENSON: This has been discussed, I think, consistently since 1966, and I think the federal government first based very strongly its argument on this, the one Professor Fox was mentioning, the supremacy of Parliament: that you

just cannot expect to have inter-governmental agencies which will in any way derogate from the responsibilities of Parliament and take their own decisions.

I might add one thing that I did not mention before. This was that if one reads the Ontario White Paper on taxation, in one sense the Ontario Paper has accepted the position that the federal government is not going to move back to an abatement system, and it has accepted as a ground rule for making plans that "Yes, you should develop your own tax system and raise money according to your own requirements". I think this is what lies behind, in part, the decision to move towards an independent personal income tax operation.

This puts Ontario in the position of having argued for the more formal sharing procedure up until this year. The federal people have interpreted the Ontario White Paper as an acceptance of their basic position; but I think what has been said by Ontario is that if we assume that the federal government is not going to move (and it has not for three years) then we do go our own way.

DR. FORSEY: In spite of what Professor Fox said about the authority of Parliament, it does seem to me quite impossible for any government to allow some outside, even joint, body really to decide. That is a point I made a long time ago

when the Premier of this province talked about joint decision-making. I jibbed at once and said I do not see how you can possibly have it. You can get consultation world without end, yes, and it may be highly desirable, even necessary, but some day, somewhere, somebody is going to have to take a decision, and you cannot imagine the Government of Canada putting itself in a position where it says: "All right, we have no more liberty in this thing. The joint body has decided and we cannot go against it." The government that did that might very well find itself out of office. The same thing would apply, I would think, to the provincial governments, even if they did not go along with the logical conclusion of the thing and assemble all the municipalities to help them to impose upon them a joint municipal-provincial scheme of things.

PROFESSOR BRADY: But, Eugene, it seems to me this paper goes further than that. In other words, it seems to throw cold water upon the very idea of a body investigating and trying to assess, as it were, where there would be an argument for a certain line of action. They are not making decisions but really presenting ---

DR. FORSEY: I am a little perplexed by the distinction they draw between recommending and advising -- how is it phrased? It seemed to me, I do not really see how, if you have a body that

is set up to investigate these things, you can jib at it offering you some suggestions. Then you can say: "Well, it is like the Ontario Advisory Committee on Confederation"; we can offer them advice by the keg and the Premier says, "This is no good. Waste basket". There you are.

DEAN LEDERMAN: One of my colleagues spent a summer in Australia not long ago investigating the system there. Although I do not recall the basis of his conclusions, his conclusion was that the central body they have there -- I forget what it is called, but there is a central body ---

PROFESSOR BRADY: The Loan Council? It is confined, of course, to one phase.

DEAN LEDERMAN: Confined to one phase, but his conclusion was that the federal government called the tune completely in that body, and it was just a facade in that sense.

DR. FORSEY: Something would depend on the constitution of the body, of course. You might have it so rigged that the other people could vote what they pleased, but it would not have any effect.

THE CHAIRMAN: The problem, as I understand it, about the Loan Council (and I do not know a great deal about how it in fact works) but the point I made in our discussion of this in Ottawa was the following. If you have a loan council, what it really does is to make decisions about

the allocation of borrowing by amount and by timing. It says: "We presume there is a certain capital market available for all of us, and rather than everybody crowding in at the market at one time or competing with one another for limited funds, some decisions are taken about the allocation of borrowing and the timing." Someone in fact in that kind of decision has to have the final say or a major degree of influence, and it would appear to be the federal government.

If that were the case, this means that the provincial governments' borrowing activity will be circumscribed by the decisions of that body which, in turn, will affect their capacity for running deficits or their necessity for raising taxes. Indirectly, therefore, it is in fact having a direct influence on their decision-making, and this raises the question as to whether this in effect means that that body ultimately has a direct influence on their decision-making or not. I would tend to think it does.

PROFESSOR BRADY: On the Loan Council it has to be remembered that the finance ministers of the states and of the federal government sit together. The Loan Council is made up really of the financial ministerial heads of the government, and they at least have the opportunity of discussion and exploring and so on. While in the

last analysis the federal government may have the decisive voice (and it has the decisive voice because each state has a vote and the federal government has two votes) if it gets the support of a state (I am not sure whether my arithmetic is quite correct) it can carry it.

The important thing, I think, is the fact that there is a pretty thorough discussion. There are only six or seven governments involved, of course, in Australia, and they have a very thorough discussion of the problems that confront them in borrowing. That in itself, I think most Australian experts on the constitution would admit, is an asset, it has its advantages.

That may be a kind of advisory type of body, and that is why I cannot quite see this argument of the paper, if I understand it rightly (and I have read it very hurriedly, partly at the noon hour). It seems to be extreme really in the position it takes against advisory bodies of any kind. It is provoked perhaps to do that by virtue of the recommendation in the Quebec brief of the sort of tax commission you have, but it need not have any particular compulsory powers. Exploring together, it seems to me, surely must be significant in this area of government as in any other. So agencies of this kind cannot all be futile.

MR. STEVENSON: Mr. Chairman, I have the notes of what you said on that very point.

THE CHAIRMAN: I hope I said what I said.

MR. STEVENSON: This is just what Dr. Brady has mentioned, that Ontario's predilection as between the Quebec position where you have a compulsory federal-provincial tax commission which decides on the sharing, and the federal position that any federal-provincial machinery should only be a body for consultation with no obligation either to recommend or even to disclose results of its activities: the Ontario position is that you should have greater inter-governmental machinery to make recommendations, both in the area of allocation and in the area of harmonizing of federal-provincial taxes, and even more specifically in the area of collection where you might set up joint machinery that we described before. I would think that fits in very closely, Dr. Brady, with what you have just been saying.

DEAN LEDERMAN: Even if it is ministers of finance meeting and it is meeting to try to reach a consensus, they have to have them provided with essential information. It seems to me that needs some institution.

THE CHAIRMAN: This very point is a large part of it, because, as I have observed, one of the great problems is that when they sit down

there are different budgetary concepts, different kinds of data used, different timing. Perhaps you cannot correct all of those politically, but in the ideal state of affairs, if all the provinces and the federal government were (for the sake of argument) bringing down their budgets in March and we all did use the same system of accounts and the same terminology and so on, we could get together during the autumn and start with the economic forecast and start to discuss priorities in expenditures -- again without ever saying ultimately what the final decision is going to be on budget day (you do not have to go that far).

If you began, in other words, to work out your budgets together -- and everyone has got to work out his budget anyway, and it does take a lot of time -- there would be the added dimension that you are working them out together through the preparation process, still reserving your ultimate decision, but that very process would have given you a much greater degree of information and insight than you would have had. These things have an effect now on one another, so why not try to improve upon it?

For example, Mr. Dozois' budget last week could not conceivably have contemplated a deficit of \$200-million, whatever the political or other exigencies, had Ontario and the federal government

not brought in balanced budgets theretofore.

There simply would not have been capital to finance that deficit. So that there are effects now, and the real question is: Can one make those interactions a little more formal and a little more comparable?

PROFESSOR FOX: That seems to me to be wise. I find it hard to understand what the federal argument here is on pages 15 and 16, because I agree with Dr. Brady and, I think, what Dr. Forsey was saying, too.

The three terms, incidentally, that you were referring to, the three powers -- decide, recommend or influence -- surely there is nothing wrong with such a body exercising the latter two of these functions -- recommendation and influencing. That would be its purpose. Is there not some value in contemplating that the advantages of such a commission in addition to that which Ian notes, which is simply the process of information really, intelligence, informing other people in the field of what you are planning on doing: that it would inevitably, even without agreement being required, lead towards some kind of consensus about priorities?

THE CHAIRMAN: This is the whole point.

PROFESSOR FOX: I cannot see why it would not.

DR. FORSEY: It might.

PROFESSOR FOX: It might?

DR. FORSEY: I would not want to bet too heavily.

PROFESSOR FOX: If you knew that six other provinces were going to move in this direction in regard to a certain field, and the federal government was also going to move in that direction, I would think a provincial treasurer would be influenced subconsciously by that.

THE CHAIRMAN: I would think so.

PROFESSOR CREIGHTON: To do it also.

PROFESSOR FOX: Yes.

THE CHAIRMAN: I think there are obviously political constraints. Treasurers in particular, finance ministers in particular, are very, very vulnerable (or sensitive I should say) to extra-political forces. That is to say, they are watching the financial world, they are talking to these people. They are very much, of all ministers of government, thinking in terms of the practicalities of how to do it and how to finance it. I agree, I think they are very much influenced by one another. They feel very vulnerable in their own government, they are always at the end of a line, and they are always the unpopular figure. "Misery loves company". They are very much affected, I have observed, by each other's attitude.

PROFESSOR FOX: Essentially they are competing for the same capital funds, too, are they not?

THE CHAIRMAN: Yes.

PROFESSOR FOX: So they want to stay in line in order that they get their share.

MR. STEVENSON: Mr. Chairman, I have sensed some agreement, anyway, in the last few minutes on this topic. I wonder if we might spend just a few minutes on the proposal of an extension of the provincial taxation power into the indirect field: whether or not anyone thinks it should be a broad power but then limited by a constitutional prohibition against perhaps the same two things that the federal government brings in; or whether it should be a narrow extension limited only to an indirect tax at the retail level, or what anyone thinks about the federal proposal from page 8.

DR. FORSEY: My impulse is to say the narrower, indirect tax at the retail level. I suppose to some extent here we can hear the voice of Cassandra Creighton telling us that a great deal of this you will not really know much about until you know what your ultimate division of powers is going to be.

DEAN LEDERMAN: If the indirect taxing permitted to provinces is confined to retail sales

tax, it is easy to police the no-tariff thing.

DR. FORSEY: Yes.

DEAN LEDERMAN: If you let it go beyond that, then I think it is beyond the institutional capacity of courts to police the no-tariff thing. You would lose control of it.

PROFESSOR FOX: I have been persuaded by the weight of the argument thus far that it would be unwise to go beyond the indirect sales tax. I think Professor Creighton was convincing in his argument that this would lead inevitably into some kind of disguised tariff, though I feel that there are other ways of governments getting into this, maybe providing just as effective tariffs by the things we have already mentioned in your absence, Ian, such as the subsidization of local industry.

THE CHAIRMAN: Purchasing policy of governments.

PROFESSOR FOX: Yes, purchasing policy. We did not mention that earlier, but that is very obvious.

PROFESSOR CREIGHTON: Very conspicuous.

DR. FORSEY: That was mentioned by somebody. I don't know whether you can do a terrible amount about that, can you, unless you wrote some very new things into your constitution.

PROFESSOR FOX: As I say, I am dubious you can. Therefore it makes me wonder whether you

ought to single out the danger of getting an effective tariff by extending your indirect sales tax beyond the retail field. In other words, is it not all one piece, really?

DR. FORSEY: But if you have already certain things which are noxious, do you want to add to them?

DEAN LEDERMAN: Sales tax and the tariff are the two big issues, Mr. Chairman, on indirect tax. The outright tariff, it is quite clear you cannot go into a province and do that. The retail sales tax -- and the word "indirect" just means the way you collect it in this context, with the proviso that the tax cannot discriminate between goods that have originated in another province and goods that are local. The potatoes from New Brunswick, the potatoes from Prince Edward Island, the potatoes from Ontario, all are subject to the same sales tax in Ontario; you are not allowed to differentiate. That is the effect if 121 at the present time. Then I think you are all right.

Once you get beyond that situation, how do you police it? Whether provinces spend money so as to in effect cause tariffs is another issue. You have got to think of some kind of limitation on spending power if you want to do that.

The Province of Quebec, I understand, at the present time will not let a contract to suppliers outside the province, unless the

differential is greater than 10 per cent.

PROFESSOR CREIGHTON: It might have been a good idea for the federal people to think up ways in which the spending powers of the provinces could have been limited.

DEAN LEDERMAN: You could adopt a principle something like the one the Americans have used. You could forbid trade barriers between the provinces; you could forbid any use of public money that has the effect of erecting trade barriers between provinces. Therefore to operate a system of tenders for government work which favours by 10 per cent resident contractors would be unconstitutional. That is a spending matter; that is not a taxing matter.

MR. STEVENSON: In a sense it brings us into the whole question: Do you put into the constitution a prohibition against effective tariffs, and what teeth can you put in it? This issue was partly joined at the meeting but not really sufficiently to give any guidance.

DR. FORSEY: Joey, I think, has an even bigger preference for local industry in his purchasing policy, I think (but no-one else will) sometimes camouflaged. That does get you into a different field. It perhaps can be done. I suspect it would be fairly difficult to get it adopted.

In answer to Professor Fox's point, my impulse is to say: "We have got some things now that are not too good, but why add to them?"

THE CHAIRMAN: Are there any other comments on this item? I am looking a bit at our agenda ahead, and I would rather like to get on. Are there any other questions anyone would like to raise on the taxing paper?

PROFESSOR FOX: Yes, I was impressed by the federal government's argument that the provinces should be given an estate tax instead of succession duties. I don't know whether that is worth discussing, but I thought it was quite a convincing argument.

DR. FORSEY: Where is that?

THE CHAIRMAN: Page 13.

PROFESSOR FOX: Section 49. Section 50, I think, is quite a good argument for this change.

MR. STEVENSON: Right.

PROFESSOR FOX: This does not involve a great deal of revenue, though, does it. It is not really terribly important in revenue terms.

MR. STEVENSON: What Ontario proposed in effect, it just arrived at the same result by letting the federal government collect the estate tax here and rebate 75 per cent back.

THE CHAIRMAN: Except they would have to be prepared to raise their rates a bit or compensate

us in other ways. We said "without a revenue loss", and it would be at the present time about \$20 million revenue loss a year, but that is not very much in these terms.

DEAN LEDERMAN: There is a very important legal point here. This presumes a single domicile test that a deceased person will have had only one domicile at the time of death in law. That means only one legal definition of domicile for these purposes, and it also means only one court system interpreting. Otherwise you can have the same legal definition of domicile, but you may have a different finding of fact between the Ontario court and the Manitoba court. Manitoba finds the deceased domiciled in Manitoba; Ontario finds him domiciled in Ontario. Unless there is an appeal to the Supreme Court of Canada, the result of which is binding upon both provinces, his estate will be doubly taxed, even though you have a single definition of domicile.

PROFESSOR FOX: So every large estate in which there was some question about domicile would end up in a court case.

DEAN LEDERMAN: And would have to go all the way to the Supreme Court of Canada, or it might have to. It would depend on whether either the taxing government or the taxpayer gave up in an earlier stage; but if it were Sir Clifford

Sifton's estate, for example, nobody is going to give up until they get to the top.

PROFESSOR FOX: I was a little puzzled why the federal government spent so long on this point when it did not involve a great deal of revenue.

THE CHAIRMAN: As you know, it has been a contentious point. It has also been a problem of some provinces giving up their share of the estate tax and creating tax havens within the field, opening right up. If that scheme were followed, it would still not resolve that problem; in fact it might even encourage it.

PROFESSOR FOX: Just move their domicile.

MR. STEVENSON: Well, the practice that has been established by Alberta and followed by Saskatchewan, and rebating their 75 per cent share.

THE CHAIRMAN: I don't know that there was any special significance to it, Paul, except in the context of treating the various fields in it the possibilities were changed.

Would the members be agreeable to going from these two papers to the Ontario paper now? This was the possible Ontario position on the spending power.

MR. STEVENSON: Which was drafted before the federal paper had been seen, and, I think, should be amended to take into account the arguments that have come up in connection with the federal

paper.

PROFESSOR CREIGHTON: There are two papers here. It is draft number 2, is it?

THE CHAIRMAN: Draft No. 2.

MR. STEVENSON: Yes. At least it is much shorter than the other.

THE CHAIRMAN: It is very short. I was wondering if we might just read it through together and then we could stop at convenient places along the way if anyone wants.

PROFESSOR BRADY: The opening paragraphs, Mr. Chairman, describe really the situation of the Ontario point of view. I do not think there is probably much debate in that. Whereas later on ---

DEAN LEDERMAN: Middle of page 3:

"Our basic position is this".

THE CHAIRMAN: That is really the point.

MR. STEVENSON: Is there any disagreement with the first two pages? The problem with the paragraph in the middle of page 2, I think it would have to be amended to take into account the actual federal paper. That last sentence in the paragraph was added at the last minute.

PROFESSOR BRADY: What you said, Don, seems to me wise, that the whole paper should be amended, in the light, as it were, of the federal paper.

THE CHAIRMAN: We do not want to edit it

here.

PROFESSOR BRADY: No.

THE CHAIRMAN: We really want to get the views of the Committee, and then we will try to carry it forward in the light of what was said about the federal paper and what was said about this.

DEAN LEDERMAN: One thing you are doing is doubting the advantages of shared cost programmes ---

THE CHAIRMAN: This is the big point.

DEAN LEDERMAN: --- altogether:-

" These shared cost programmes have
"their proponents and opponents. We believe
"that the disadvantages outweigh their
"advantages"

My comment on that would be that maybe the use of a shared cost programme may be minimized; it may be they can be made more rational and sensible than has been the case in the past, but I do not think you can ever get away from the need for them completely.

PROFESSOR CREIGHTON: Well, the whole consideration of the elaborate method of achieving a consensus on these programmes ---

DEAN LEDERMAN: According to the other paper?

PROFESSOR CREIGHTON: Yes, on the other paper, assumes that we regard them as desirable, does it not? I was assuming that.

DEAN LEDERMAN: I think the federal exposition in their paper on shared cost programmes about the inevitable inter-penetration of federal-provincial powers, even the mutually-exclusive powers, is well taken; that, once again, the reconstruction of the cities, all three of the major levels of government in the country have to be in the act, no matter what kind of distribution of powers you arrive at, no matter how you raise or spend money; the federal government is going to be involved, the provincial government is going to be involved, municipal governments (regional or otherwise) are going to be involved. You just cannot deal with that problem, you cannot deal with pollution without invoking the three levels of government. Unless you are going to abolish one of these levels of government altogether, you are in for an integrated programme. If you are in for an integrated programme of some kind, you are in for cost-sharing.

PROFESSOR BRADY: Not necessarily in the sense of shared-cost programmes developed, say, in the 1950's and 1960's.

DEAN LEDERMAN: No, not necessarily.

PROFESSOR BRADY: Determined by federal initiative to a great extent, as it were.

PROFESSOR CREIGHTON: No, but that federal initiative has been abandoned.

PROFESSOR BRADY: Well, I agree that this problem of pollution requires collaboration between all levels of government. How is it to be initiated?

DEAN LEDERMAN: That leads to cost-sharing, leads to shared cost programmes. How it is to be initiated is another problem. My point is just narrowly confined to the fact that whoever initiates them, however they are written, however they are ratified in their various governments and legislatures, you are going to have to have them.

DR. FORSEY: Yes.

DEAN LEDERMAN: I agree that this does not mean we have to repeat the history of the last few years and have all the conditions laid down by the federal authorities -- "take it or leave it".

PROFESSOR CREIGHTON: The first paragraph after our basic position goes too far, it seems to me.

DR. FORSEY: It is Utopian to talk about agreeing on a distribution of spending power and taxing capacity that will result in a relative balance between spending responsibility and revenue-raising of the two levels of government. This, I am afraid, is completely unrealistic, especially in a rapidly changing society like ours. The thing would hardly be written until you would have to re-write it or find ways to get around it. I marked in the margin there the single word "Utopia".

Your ideal situation you are not going to reach.

DEAN LEDERMAN: It does not fit in the whole tax harmonization exercise for management of the economy, either; it does not fit on the other side of the coin.

DR. FORSEY: I take fundamental objection to the next paragraph. There is an assumption at the bottom of page 3 that provincial priority-setting is the solum bonum, and there is the explicit rejection at the middle of paragraph 4 of the opposite way:

"In a proper federal system we do not think
"there should be a presumption that federal
"government priorities are of greater
"importance than provincial."

MR. STEVENSON: "In areas of provincial jurisdiction" should probably be added.

DR. FORSEY: That is another matter. That is not what you say.

MR. STEVENSON: All of this discussion is about fields of provincial jurisdiction.

DR. FORSEY: Even so, I am much more in sympathy with the line they take in the Dominion government paper about national interest and that sort of thing. This whole line that is so popular now, that provincial governments and legislatures and the central government and legislature are equal and coordinate is one that I reject. To my great astonishment a week or so ago.

I heard Professor Frank Scott, of all people say that you cannot have one set of governments in a federation subordinate to another, which is nonsense. He did not say that in the discussion, Alec, but I heard him say it to somebody outside. You have got to have a central authority essentially which is more than coordinate; you have to have a subordination. In other words, here I am just saying again that I am a John A. Macdonald supporter, unrevised and unrepentant. I think this is one of the things I objected to in Professor Atkey's paper, the classical federalism, the Procrustean bed onto which you must force the people of Canada. The basic assumption that the provincial priorities are at least as important as the national priorities is one which I question.

DEAN LEDERMAN: Right across the board, every subject?

DR. FORSEY: Well, to the extent that it is questioned in the Dominion government's memorandum. I think there is a national interest at a certain point in things which are at present formally under provincial jurisdiction. They are there chiefly because these old rascals in the judicial committee put them there when they had no business to do so, but they are there.

PROF. MEISEL: Mr. Chairman, on this paragraph on page 3 following "our basic position is

this", it seems to me that while this statement is . Utopian, I do not think there is anything wrong with making a Utopian statement. It seems to me that there is some point in laying out objectives and providing machinery that gets you as close to those objectives as you can get at any given point, and then providing for other machinery that will permit you to keep approximating that Utopian position.

In other words, the fact that you cannot ever achieve it does not matter. After all, this is something that happens in all political communities. You never achieve your aims.

DR. FORSEY: Quite.

PROFESSOR MEISEL: So I think we should not be too upset about setting up something that we know cannot be fully realized but towards which we are moving. I think from that point of view this is very useful.

DR. FORSEY: I think that is all right, but here you have the statement:

"Until such an ideal situation is reached ..."
and the effect that left on me was that pretty soon we would get to the situation, pretty close to the ideal, but meanwhile, just to look after tomorrow and the day after tomorrow, you can put down some guidelines. I think this is unduly optimistic.

DEAN LEDERMAN: Well, the federal government has moved a long way, in principle, to

meet whatever criticism we may have in detail; they have moved a long way in principle in proposing some guidelines.

PROFESSOR CREIGHTON: And they have been very modest and cautious in their attempt to implement this idea of national interest in provincial spheres of jurisdiction. The whole business of consensus in the way in which we propose to modify or amend their suggestion, is the proper way of testing the national interest, it seems to me. Is it not ten provinces and two-thirds of those ---

DEAN LEDERMAN: He was proposing use of the Fulton-Favreau formula, one of those Fulton-Favreau tests.

PROFESSOR CREIGHTON: Certainly you must change 4.

DEAN LEDERMAN: And must not call it by that name.

PROFESSOR CREIGHTON: "In a proper
"federal system we do not think there
"should be a presumption that federal
"government priorities are of greater
"importance than provincial".
If you are going to say that you have to say ---

MR. STEVENSON: "In areas of provincial jurisdiction".

PROFESSOR CREIGHTON: Yes, that must be added.

THE CHAIRMAN: May we for a moment come at this in another way in a sense which is rather contemporary in terms of recent political events? I think this morning Bill Lederman was speaking about the need to give some great attention, whether it is priority or not, to the needs of the urban communities, transportation, pollution, urban renewal, housing and so on. The question is, under the present arrangement: how is a federal presence to be manifest which assume that if the problems of cities are large enough to be national problems in the same sense that at one time the problem of building a trans-continental railway or, in a continuing sense, defending our borders, are national problems; the first question is: "Do these problems need to be solved nationally, as it were?"

PROFESSOR BRADY: May they not be more effectively solved, as it were, on a regional or provincial basis?

THE CHAIRMAN: They may not be solved on a regional or provincial basis. So this immediately takes us into the whole business of how you do it. Do you transfer the constitutional responsibility to the federal government? Do you increase the provincial taxing powers accordingly? -- and that is where we come back to this statement, "balance between spending

responsibilities and revenue-raising"; or do you say that the areas will always be gray, and the political reality will tell you that all politicians will always be interested in whatever is of the greatest concern to the people; that the man in the street does not carry the British North America Act in his hip pocket, and therefore he will continue to assail all politicians (whatever parliament they sit in) for attention and whoever jumps first will do the job, and therefore you should recognize that the only practical solution is a great deal of concurrency, inter-mingling of programmes, and so on; and that if you do that you will either have all the continuing headaches of jurisdictional disputes, or you will find some new kind of machinery that will carry you on to a new vista? That seems to me the "small p" political problem we face in Canadian federalism and will face. Is this proposal here the best way at it?

DEAN LEDERMAN: I think the description you have just given in your last words describe the true situation. I think the way out is to have Trudeau federalism -- and, mind you, I am just flying by the seat of my pants here and throwing things on the table for consideration (like these papers say, I reserve the right to change my mind); you get your uniformity for the federal system at quite a level of generality in

extraction; but you put all this inevitable detail, inter-penetration of how you deal with it, into detailed inter-governmental agreements.

We need perhaps a better code, a sort of special code for inter-governmental agreements, in this country, not only federal-provincial but inter-provincial.

Take urban renewal. The federal government in the province of Prince Edward Island are not going to write the same kind of agreement about renewing Charlottetown that the government of Ontario and the government of Canada will write about renewing Toronto. There will be all kinds of differences, and the cost-sharing will have to be written into the agreement; but there is a philosophical programme here in the relation of the particular to the general. To make things work you have to have massive detail. This is the thing you do not want frozen by special entrenchment or arrangements that are too long-term.

The things you do define, going to our more general proposition and beyond that the whole spirit of the thing, I think I made the statement at the conference at Mont Gabriel that cooperative federalism has failed; it just really had not been tried yet. This is more a matter of the spirit in which the thing is approached than it is a

matter of mechanics.

THE CHAIRMAN: One of the grounds on which it founders so far perhaps -- let us take another highly current example with which we are dealing, that indicates that, even with the will, we may have to think about other kinds of machinery for a great many of our problems.

Toronto waterfront: you have Metro Toronto, several municipalities, the federal government, provincial government, Harbour Commission, C.N.R., C.P.R., and sundry other bodies: a great deal of administrative force and thrust, and coordination is required to bring any order out of that situation for planning purposes with a good deal of authority behind it.

Does this mean that perhaps we are going to have to think in terms of willingness to create all kinds of special purpose bodies that will have authority to do a job and, if so, to whom are they responsible and how are they responsible or can we just try to strike a great big committee of all those interested parties, and yet ultimately in a decision-making sense who decides that kind of thing?

DEAN LEDERMAN: Is not the dilemma you are posing, with respect, a little false in this sense; that the senior governments involved under the federal constitution are the government of

Ontario and the government of Canada. These other bodies you are naming are either federal or provincial Crown corporations or federal or provincial tribunals, and in the end they do what they are told by the senior level of government. They are the crux of the matter.

PROFESSOR BRADY: Although there may be a point in committing them to state views.

DEAN LEDERMAN: That is another matter, but if you are going to talk about who has the final responsibility and who has the decision-making power, there is no doubt under the constitution.

One of the great un-stated problems in this country today is that the poor, unfortunate municipal governments are the end of the line. Both the federal government and the various provincial governments have been guilty of passing on a great many of the nitty-gritty problems on to the municipal governments and leaving them there. As a municipal taxpayer, I feel this very strongly.

PROFESSOR CREIGHTON: Hear, hear!

DEAN LEDERMAN: As a Kingston taxpayer. I do not think I am being unfair. The municipal government has been the end of the line, and the senior governments in this country have been evading their responsibilities.

THE CHAIRMAN: Let us then follow that on. The point is, I suppose, that it depends on the

political strength in the particular case. In that waterfront situation perhaps one should say that the only government that is going to really be able to exercise pre-eminent authority ultimately over all of these things is the federal government. Maybe we should bow out and say: "You go in and clean it up, and do it". This is what Prince Edward Island has done because it had no other option. It said to the federal government: "All right, you come in and run the regional development programme for the province. We haven't the resources, we haven't the power. Come in and do it". In effect they have traded it off against the causeway, and they will get a big programme done there.

The Ontario government being in a more powerful position, is not prepared to say, presumably, to the federal government: "You come in and clean up the waterfront from Oshawa to Burlington".

DEAN LEDERMAN: You could bargain your way to a joint harbour commission or something, a Tennessee Valley Authority kind of thing.

THE CHAIRMAN: This is the point I am getting at. You said, "authority or something", and this is the point I was taking. Does there have to be a kind of commission or authority or special-purpose body, and is that an answer? If so, if it is jointly responsible to the two

levels of government, in what way is it responsible, how does it report, how does it answer to the elected officials?

DEAN LEDERMAN: Unless there is a detailed inter-governmental agreement written and ratified by statute in Ottawa and Toronto, with term on it, provision for review after five years and so on.

THE CHAIRMAN: Again, what about your municipalities that you are worrying about?

MR. STEVENSON: One of the reasons that regional governments are being established is to get rid of special-purpose bodies.

THE CHAIRMAN: And to give a viable local government base. The real problem at the local government level surely, is that it has got caught -- and this does not apply to a place of the size of Toronto, presumably, but in many instances -- it is the victim of the dilemma between democracy and efficiency.

Part of the Ontario Government's philosophy in this is to create larger units of regional government which will still be close enough to the people to be responsive and democratic, and large enough to be viable as the local unit.

PROFESSOR MEISEL: In the example that you quoted, Ian, you may have happened to have hit on one in which there is both a functional and geographic unit. I think the example is more

important than that, because it points to the fact, it seems to me, that there is probably going to be in the future a great many areas where there are functional reasons why several levels of government might want to work together, although there may not always be a geographic base for it.

I do not know quite how you get at this, but it seems to me that in very general terms what you want to do is to give every region of the country and every government of the country some very strong incentive to want to continue working with the others, and that you might sometimes achieve this through functional arrangements about specific things, like Expo.

DR. FORSEY: Yes.

PROFESSOR MEISEL: Then once there is enough detail from this, then you are willing to make sacrifices for things you do not really like which are not as important in relation to other things that you like.

I think one of the problems now is that some governments -- and I would say notably B.C. perhaps and Quebec, feel that there is not enough in it for them to want to make the kind of compromises that, say, Ontario wants to make because we do feel that we are getting enough out of it.

PROFESSOR BRADY: I understand this

argument of the Province of Ontario on page 4, the first principle:

"We propose that shared cost programmes
 "in the area of provincial jurisdiction
 "should be kept to a minimum"

What you are really arguing is that there is no one device or procedure that can be effective in the existing circumstances of confederation; that there may be a variety of choices available, and that in one instance you may plumb for one and in another situation for another, and so on. Is that a right interpretation of your classification here of the six? Is this, in other words, what you are endeavouring to set forth? It is a reasonable position, I think, on the whole, but I want to be sure whether this was the intention.

THE CHAIRMAN: I think it is.

MR. STEVENSON: I would think so.

THE CHAIRMAN: Flexibility, again, is the kind of thing we have been saying; that the Prince Edward Island situation is different from the Ontario, and within Ontario the Toronto problems may be different from Kingston and so on.

MR. STEVENSON: The presumption that you must use the shared cost programme where there is an extra-provincial interest in a field under provincial jurisdiction, is not necessarily the only route.

DR. FORSEY: I think you might do better then to phrase it rather in the way that Professor Brady has phrased it, which seems to me excellent. I was about to suggest, in less felicitous terms, much the same sort of thing. As it is here, it has got something of a negative touch to it, and it is too much concentrated perhaps on the shared cost thing rather than taking a positive approach to it and saying that there may be quite a variety of things that it will be necessary to do. For example, I do not see why you should rule out No. 1 for certain purposes. There may well be certain areas where you have to look at the thing and say that the present locus of jurisdiction is not the best one. It may turn out on examination that there are no such areas, but I do not think it should be assumed a priori that it is so.

Then in the second place there may well be areas in which you say: "What you want is more administrative delegation". After listening to Professor Lederman on various occasions, I am more dubious about legislative delegation than I was, but certainly administrative delegation might be your answer in some cases.

I am rather more dubious about No. 3. I do not quite see why that is necessary, and I am rather dubious about how much can be achieved.

4 looks to me like a reasonable proposition;

so does 5, although I would be happier if I knew exactly what was meant by "regional agencies" (I presume it means more-than-one-province agencies) and if I knew who was going to create them. It seems to me that to some extent what you have in the second or third sentence of No. 5 is not unlike the proposals of the Dominion government we have been looking at this morning.

MR. STEVENSON: Right.

DR. FORSEY: On the same field. 6 certainly seems to be all right, but I think it would be a good idea to give the impression in the way you phrase it that, as Professor Brady gave just now, there may be a variety of ways of doing this, and you do not want to preclude yourself from considering at least, and probably using in different circumstances for different problems.

MR. STEVENSON: That is very much the intention. I think it would not take much to change the wording to make it clear.

PROFESSOR BRADY: I have a number of suggestions about the wording or phrasing, but I do not know that we should go into that necessarily.

DR. FORSEY: No.

PROFESSOR BRADY: I can give the suggestions to you, but I think the phrasing of all six could be considerably improved upon.

DEAN LEDERMAN: The only thing I was saying, Mr. Chairman -- and I was saying it in lawyer's language; I am really agreeing with Professor Brady in saying that when you get around to making this great variety of arrangements, it strikes me that the inter-governmental agreement ratified by statute in both places is the way to do it.

DR. FORSEY: Yes.

DEAN LEDERMAN: The way to get the variety, that is really what I was saying; or probably that you need a code, a few ground rules, in these inter-governmental agreements, including some way of holding governments to them for definite periods.

MR. STEVENSON: Page 8 brings this out to a point.

DR. FORSEY: The only point where that would not apply is the first one there about possible transfer of jurisdiction.

MR. STEVENSON: Yes.

DR. FORSEY: May I make a stylistic point at one point here. On page 5, surely one does not acquiesce "to" but "in". This is a vulgar error which is now so widespread that it sends shudders up and down my spine every time I see it -- like Donald's word that he used this morning with such horror "presently" or "at present". There are a variety of other ghastly things that people

perpetrate upon the English language.

On page 6 also you get:

"After negotiation a high proportion that
"it would have received ..."

Surely it should have been "high proportion of
what it would have received".

MR. SYMONS: Mr. Chairman, could I ask a little more about point 3 as one of the alternatives on page 4. I share the view that the total of these points is a helpful approach and a good one, and I like the fact that it is a varied approach. The one that I just wonder a little about is point 3. I am wondering what some examples of this would be. I suppose the Council of Ministers of Education might be one such example. I am wondering how many they are and how they are working so far; whether the experience to date suggests that this is or could become a practical and effective approach and, if so, would this in due course involve a secretariat of inter-provincial activities as is specified for federal-provincial activities?

MR. STEVENSON: From all one can see, it is a spotty thing now; it is very good in some fields and not very effective in others. Some provinces are very much in favour of inter-provincial action; others are not. There are a number of regular, continuing meetings of ministers

in provincial areas -- highway traffic regulations, traffic safety, this kind of thing.

PROFESSOR BRADY: Resources?

MR. STEVENSON: The Canadian Council of Resource Ministers is a federal-provincial body, although a lot of its recommendations may have effect only with regard to the provincial ministers represented.

DEAN LEDERMAN: They publish a lot, anyway.

PROFESSOR FOX: Is there not also a council of prairie provinces, provincial ministers?

MR. STEVENSON: There is a Prairie Provinces and Atlantic Provinces Economic Council.

PROFESSOR FOX: They are a regional council.

MR. STEVENSON: Yes.

DR. FORSEY: They are not specifically dedicated ---

MR. STEVENSON: They are more 5 than 3.

DR. FORSEY: ... to achieving the desirable coordination of compatibility of programmes of national concern. That is a purely regional sort of thing.

The Atlantic Provinces Economic Council, as far as I know, never worries much about what is going on nationally, except to get money if it can.

PROFESSOR BRADY: I suppose it is of national interest, at any rate, if the Atlantic provinces can put themselves into a better economic

position.

DR. FORSEY: Yes, but it does not really come under 3. What I would be afraid of with 3 is that it might lead you to a re-confederation in a fit of absence of mind. You might get a shunting of one thing after another which really, if it is going to be shunted at all, ought to be shunted to the Parliament of Canada, to some kind of weird and wonderful council of provincial ministers; so that more and more and more things that were of national concern cease to come within the ambit of the government and Parliament of Canada.

MR. STEVENSON: I think there are a great many -- I shouldn't say "a great many" but there are certainly some of the shared-cost programmes which have been introduced in the last few years, have been introduced for probably the only reason (by far the major reason) that there just was not sufficient inter-provincial machinery or activity to ensure at least compatibility of provincial standards in the field.

DR. FORSEY: This is what, for Medicare, you mean?

MR. STEVENSON: No, I am thinking of ---

DEAN LEDERMAN: Portability of pensions?

MR. STEVENSON: This was not shared-cost programme. Portability of pensions is an example of inter-provincial action where the

Ontario act was adopted in toto pretty well by four or five other provinces.

THE CHAIRMAN: Exactly what is happening now with securities legislation?

MR. STEVENSON: Then by the federal government. It is a case, I think, where perhaps a shared-cost programme was prevented by provincial action.

PROFESSOR SYMONS: Mr. Chairman, are we at a point or approaching the point that this may become a sufficiently extensive aspect of this matter that it would call for the establishment of an inter-provincial secretariat to carry on inter-provincial programmes? If we are approaching that point, is it worth deciding whether or not we want to create this further extra-parliamentary agency?

MR. STEVENSON: Mr. Robarts actually made the suggestion, if you remember, at the Confederation of Tomorrow Conference.

PROFESSOR BRADY: An inter-provincial secretariat?

MR. STEVENSON: Yes.

PROFESSOR BRADY: Would you say that the educational group -- what is it called, anyway?

MR. STEVENSON: Council of Ministers of Education.

PROFESSOR BRADY: Yes, precisely.

MR. STEVENSON: It does have a permanent secretariat now.

PROFESSOR BRADY: Is not that type of organization with a secretariat that is related specifically to a certain area of action, more likely to be effective than a general inter-provincial secretariat which would try to make itself a master of all subjects and areas? I raise the question. I have not any very fixed views on the matter.

MR. STEVENSON: The Council of State Governors in the United States has a permanent secretariat; it is not large, but it does publish a number of items to all governments, and it does try to do some research to promote uniformity and compatibility of state laws and programmes. It is a precedent in a general sense.

DR. FORSEY: Yes, but the circumstances are not by any means parallel. For one thing, you have got a large number of small states and not a small number of large provinces which is, broadly speaking, our position. For another thing, the judicial interpretation of the two constitutions has turned them upside down to a considerable degree so that the states, although they talk about being sovereign states and that kind of thing, in fact are very small beer in the American system of government. They are far less

powerful than our provinces, I should say, in actual fact. What they do with their secretariat, and this and that, does not amount to a row of beans. There is no real danger that a conference of state governors equipped with all the secretariats in creation, will become a rival centre of power to the Congress and the administration of the United States.

If you have got a sufficiently formalized inter-provincial authority of this kind in our circumstances, and that is the climate of the thing that you have very widespread now in this country, you could very easily get a rival centre of power. This is what I meant by saying that extending this in a fit of absence of mind would lead to a re-confederation.

PROFESSOR SYMONS: Mr. Chairman, it was some feeling of this kind of potential in the future that caused me to raise the point. I think the circumstances are so different that the political implications of establishing an inter-provincial secretariat could be considerable; and I think there is a difference in kind (not just in degree) between having an inter-provincial secretariat for the Ministers of Education, for Resource Ministers, on the one hand, and establishing an inter-provincial secretariat period.

It may be that after investigation it would

appear to be desirable to establish an inter-provincial secretariat, but I think it would be well worth looking at it carefully before we skidded into it.

DR. FORSEY: Like Adam Smith's meetings of manufacturers, they should always be regarded not only with the greatest circumspection but with the greatest suspicion that their purpose was to raise prices and exploit the public.

THE CHAIRMAN: Here is the kind of situation that arose last summer. The premiers meet every year in a very pleasant manner in the first week of August and have been annually for nine years now. They came to the view last summer that this was all very well, but they were each facing the same problems in their own jurisdiction, and they were problems in the major policy realm. They were not inter-provincial trucking codes, or things of that kind, however important these might be. They were not preparing themselves adequately and jointly to discuss these; they are all matters of provincial jurisdiction, and they were not uniting in their attack on these problems. They picked out four problems in particular, which were all exclusively -- well, some may wish to take issue with this -- provincial matters in their judgment, and in which they had a shared interest: the problems of the costs of education, the problems of

health services, the problems of pollution and the problems of urban affairs. The last two, since they are perhaps more contentious, leave them aside; but the first two they all had a common interest in the cost, the rapidly escalating cost of education and health, which together in each instance accounted for perhaps 66 per cent of their budgets and were becoming very much beyond their control -- and in which mobility was a great problem, because teachers, professors, doctors and what-have-you could move from one province to the other and transfer the escalation and so on. So there was an interest perhaps to act on a national basis.

They asked themselves: how do they start to really equip themselves to act jointly in that matter? One of the things they felt was that they did not have very good background preparation; perhaps good preparation from their own provincial point of view, but in helping them to act nationally and jointly on it. How do they tackle those sorts of things, or are there advantages in tackling them together? Under the present system of arrangement, what in fact can the federal government do about the fact that the public sector has increased very largely in two areas -- education and health; that this has contributed a great dimension to the governmental budgetary problem and to the national problem of inflation and costs

and so on: how did we get at that? Is there any way of getting at it inter-provincially? That is the kind of thing they were thinking about there, and that is the kind of thing that was behind our thinking in this sort of proposition.

PROFESSOR FOX: There are two ways of getting at it. I could see you creating an inter-governmental institution of some kind such as has already been suggested. That could be either of two kinds: one, a general organization to handle all sorts of problems, or a collection of ad hoc bodies that deal with specific areas (Dr. Brady has referred to that problem); or, secondly, another means would be to create a private institution which would be supported by them jointly, which would do the task that they wanted done, whatever it was.

I would be inclined to the second of these if it were a research problem they wanted to have solved -- a sort of Brookings institute for the provinces, as it were.

THE CHAIRMAN: The provincial governments' equivalent of the Canadian Bankers Association.

PROFESSOR FOX: Well, Economic Council of Canada, I suppose, something of that order; but the choice of this alternative depends on what you want to do.

It seems to me what you have suggested, Mr.

Chairman, is that these provinces now want to defend themselves against large group interests that are appearing within their own societies, and therefore in typical social fashion they are creating an organization to bargain with those interests. It is rather interesting to see it coming about.

So I suspect that if there were any development, it would be one of the two earlier kinds that I have outlined, rather than the third; but it seems to me that it probably will come about in some form. It already has in relation to the council Dr. Brady mentioned.

THE CHAIRMAN: You might have, in other words, all the ten ministers of health sitting down across the table from the Canadian Medical Association, not the provincial bodies at all, but starting there and then filtering down to the provincial bodies.

MR. PERRY: The thing that strikes me about this discussion, having come very late, is that it is quite a while since we have even mentioned money.

PROFESSOR BRADY: We spent the morning.

THE CHAIRMAN: You should have been here all morning.

MR. PERRY: Are we not supposed to be on the distribution of spending power? It seems to

me we are arguing basically where the locus of authority should be in many of these things, and this is obviously very confused in these rapidly changing times.

It even bothers me a little bit that on page 4 and 5 we set up certain kinds of (basically) transfers of authority as alternatives to shared-cost programmes, which in a way are simply devices for sharing the expense of a programme. This bothers me a little bit, but I think we are confusing the issues, which is the normal human proclivity, of course.

Are we really trying to decide who can best afford to do things, or are we trying to decide where it is best that they be done, and leaving until later on the decision as to who pays for it? -- if I am not being a fundamentalist.

THE CHAIRMAN: There are three problems that are inextricably related: taxing power, spending power and distribution of powers, and in a sense ---

MR. PERRY: You have got them in the air at all times, but just having listened for half an hour here, I was beginning to wonder whether you are ever going to get them down.

THE CHAIRMAN: The juggler has lost command of the situation.

MR. STEVENSON: You think it is impossible

to discuss this first?

MR. PERRY: My problem is I think you are trying to discuss everything at once, instead of going from one to another.

DR. FORSEY: I think this discussion we have just been having, arose out of the focusing on the shared-cost programme for handling things which though in provincial jurisdiction may seem to have wider repercussions (let us put it that way). The proposal that we are down to here, and Professor Brady's revised version of that, you might say, was an attempt rather to say: "Look, this thing we are essentially trying to do with a shared-cost programme, can probably be done in a variety of ways". The shared-cost programmes have led to a great many criticisms. There may be ways of handling the thing which will obviate these criticisms. I thought that was how we got at it.

I agree that it seems to be a long way from the actual question of who pays the money, but I think the progression of discussion was not altogether unreasonable, perhaps partly because of what we were discussing this morning when Mr. Perry did not have the privilege of listening to a great amount of distilled wisdom.

MR. PERRY: I have been grieving all morning over that.

PROFESSOR MEISEL: Mr. Chairman, before

this discussion gets too well organized, I would like to come back to an issue raised before, simply because I happen to disagree, I think, with what both Messrs. Forsey and Symons have said, a little bit, and I would like to put this disagreement on record.

On point 3 on page 4, I think there is, of course, a great deal in the anxieties that both Dr. Forsey and Professor Symons express. On the other hand, I think there is a positive side to this report which you should not ignore. It seems to me that if you take the very long-run perspective on this thing, you get the sense (at least I do) that Canada is in very serious trouble; that there are some people (particularly in the Province of Quebec but elsewhere as well) who are not too happy about working with Ottawa on a lot of issues; but that if we can solve their problem in the short run, in the long run there is enough vested interest for all of us to stay together; and that if we can overcome the immediate problems, there is much to be said for the country surviving for the future.

I think the kind of flexible inter-provincial action that is provided here may be very useful as a short-run stop-gap for certain kinds of agreement which permit us to develop common interests.

Then I would hope that in the long run --

and a lot of these solutions have to be centralized --- in the long run we shall have to relinquish some of these more atomized approaches and return to more central decision-making processes, but right now this is politically very difficult. Therefore I think one could look at the third option as something which could be exploited in that sense.

DR. FORSEY: Yes, if it is kept in perspective and in proportion.

--- Short recess.

THE CHAIRMAN: Moving along apace, I trust, I think we might spend a few minutes on the next part of this paper, which is the material on pages 5 to 7. Then we have some other matters of some importance to deal with on our agenda today.

Don, could you put this 5 to 7 part in a nutshell, do you think?

MR. STEVENSON: Well, up until this point, we have just said that shared programmes should be avoided if possible, and here are some alternative means of reaching the same objective.

Starting on page 5 one begins into some ground rules for shared-cost programmes for areas where they still may appear.

The first one in the middle paragraph of page 5 is -- a shared-cost programme where all provinces agree, fine. Starting at the bottom of page 5 are the problems where one or more provinces

do not agree, and here I think we get a little bit fuzzier; but the (a), (b), (c) at the top of page 6 rule out shared-cost programmes. I guess they speak for themselves.

The rest on page 6 just describes the situation for a province which does not wish to enter shared-cost programmes now.

In essence, I think you have somewhat the same argument as in the federal paper, but the end result is a lot different. It does not recommend 100 per cent fiscal equivalent payment to the province, but something a little bit less.

PROFESSOR CREIGHTON: You have upped it, I notice.

MR. STEVENSON: Yes.

PROFESSOR CREIGHTON: It was 80 per cent in the first draft and 90 per cent in the second.

MR. STEVENSON: That was the Provincial Treasurer.

THE CHAIRMAN: You have an eye there.

MR. STEVENSON: You might be interested to know that if this paper is at all harder in line than it was when you saw it last, it is solely because of our political bosses, who would have taken a much harder line than the paper is at present.

This was discussed in Ottawa as a possible alternative to the payments direct to people. I

think the federal people felt that one of the reasons they did not recommend that there be an equivalent payment to provinces rather than people, was because they felt it should not be 100 per cent of what the province would otherwise get if it entered the shared-cost programme, and they could see no objective criteria for basing any figure under 100 per cent, although they accepted the idea of something like 90 per cent as something that would meet their objection.

PROFESSOR CREIGHTON: Do they accept that?

MR. STEVENSON: They accepted this as something which could be logically argued.

PROFESSOR CREIGHTON: Because it seems to me completely to defeat the whole purpose of the shared-cost programme; because they only oppose the shared-cost programme because they believe a national issue is at stake and the majority of the provinces have agreed on this; but in the provinces that do not, this national interest is completely defeated and in other instances substituted for, or might be.

MR. STEVENSON: But in their own proposals they would envisage much the same thing.

PROFESSOR CREIGHTON: No, because they are giving the bonus to the people who would probably be benefited by the national programme if it goes into operation.

MR. STEVENSON: But you can also assume that the province might pick that up directly by increased taxation and use it in another programme.

PROFESSOR CREIGHTON: If it were, for example, Medicare, presumably if you got this money you might use it for your medical expenses or something like that; in other words, do in your own capacity what the province might have done for you if it had been applied in your own province.

MR. STEVENSON: Of course, the province could, say, fix a compulsory premium to the extent of a rebate from the federal government, and just take up the slack. This was something discussed in Ottawa, I think proposed by the federal people that: "If you want money, just take it back up from the people".

PROFESSOR FOX: Mr. Chairman, these figures are obviously simply hypotheses.

MR. STEVENSON: Yes.

PROFESSOR FOX: I notice the figure in the middle of page 5 -- I do not want to go back but I just notice you have now changed your tune on the 50 per cent, too. You recall that draft that came out of your sub-committee, which indicated, I think, the federal government would have to have, I think you said, at least 50 per cent.

PROFESSOR CREIGHTON: At least 50 per cent.

PROFESSOR FOX: Now you are saying the

opposite, that they can get on with less than 50 per cent.

MR. STEVENSON: I do not think the draft ever said "at least 50 per cent".

PROFESSOR FOX: About 50, then.

THE CHAIRMAN: I think the problem was that this Committee argued 50 per cent.

MR. STEVENSON: Right.

THE CHAIRMAN: But the Ontario government ---

PROFESSOR CREIGHTON: On higher authority ---

THE CHAIRMAN: -- decided otherwise.

MR. PERRY: Never said a word on it.

DR. FORSEY: I am inclined to think, Mr. Chairman, that some of this might have to be looked at again in the light of our discussion this morning.

MR. STEVENSON: Yes, very much.

DR. FORSEY: Because we have got these ground rules which, I think, we were inclined to think went some distance towards satisfying the criticisms. Some of this is perhaps out of date.

THE CHAIRMAN: I think that is exactly the point.

DR. FORSEY: For example:

"Only if none proves acceptable ..."

In the light of what Professor Brady was saying a while ago that is perhaps a little bit strong, saying that this is the absolute last resort.

Then:

"In no instance should a shared-cost
"programme ostensibly deal with a nation-wide
"question, unless a majority of provinces
"find it acceptable."

It seems to me that the kind of thing we worked out
after we had disposed of the Senate this morning,
would perhaps meet the case.

MR. STEVENSON: Yes.

DR. FORSEY: More effectively than that.

MR. STEVENSON: Two-thirds of the province,
or seven provinces with two-thirds of the population?

DR. FORSEY: We were inclined to think
something of that sort, and here in this instance
this just says a majority. That might not really
be sufficient, because you might have your majority
made up of the small "have not" provinces who would
swing more weight than they really should, though
it hurts me to say so.

PROFESSOR CREIGHTON: These two central
provinces infallibly oppose all that, so that they
would win in the end, wouldn't they?

PROFESSOR FOX: I wonder, if you assume
that, whether you do not contradict what you have
been arguing before we had the break? That is
that you should have quite a loose sort of
pragmatic federalism, in which you might have ad
hoc decisions on certain specific issues.

If, for example, Prince Edward Island decided

to enter into this economic development programme with the federal government, which is a shared-cost programme, is it not; then why should it not be free to enter into that programme without having a majority?

DR. FORSEY: It would be under the Dominion proposals we were examining this morning.

MR. STEVENSON: I think on page 7 you might find the same possibility here.

PROFESSOR FOX: But how would it fit if you took this as a rule?

DR. FORSEY: What, the two-thirds business?

PROFESSOR FOX: Yes.

DR. FORSEY: That was to apply to something you were trying to make nation-wide. The proposals we looked at this morning -- and with this particular part of them I think we were inclined to agree -- said that if it is a particular province or if it is a particular group of provinces, then you do not need your two-thirds consensus, because that is a special situation that you deal with in a special way. That is my recollection of what we had this morning.

PROFESSOR FOX: I was thinking there might be problems that have implications that are national or nation-wide -- urban renewal, for example -- but they might require different specific treatments with each of the number of

governments. Do you see my point, that the issue might be nationwide, but specific arrangements might be individualized.

DR. FORSEY: You might have an umbrella agreement.

PROFESSOR FOX: Yes.

DR. FORSEY: I would think, though, that that is the harmonizing of what Professor Fox has just said, and what I think was roughly the consensus we arrived at this morning was a matter of phrasing. I do not think that is too difficult.

THE CHAIRMAN: I think you are right, and this is the purpose of take into account our morning discussion in revising this.

MR. STEVENSON: Is there general agreement or disagreement with the main paragraph on page 6 as an alternative to the federal proposal for direct payment to persons in a non-participating province?

DR. FORSEY: I think most of us this morning felt that the direct payment to individuals was completely impracticable, and that therefore it had to be opposed. I am inclined to think myself that the proposal that the non-concurring government should be given a high proportion but not the whole of the fiscal equivalent, is a good one, because it gives them some inducement to look more seriously at the desirability of going into it. But if you are going to have any

fiscal equivalent or part of a fiscal equivalent, it is quite clear you would have to go to the provincial government and not to individuals -- just beyond even computer technology at least at present.

PROFESSOR CREIGHTON: It ought not to be as high as 90 per cent in my view.

DR. FORSEY: Perhaps not.

MR. STEVENSON: Until now opting-out has always been thought of in terms of 100 per cent.

PROFESSOR FOX: Yes, I think it is hard to make out a logical argument for any amount, is it not?

THE CHAIRMAN: In my feeling, you either opt out or you don't.

PROFESSOR FOX: Either zero or 100 per cent.

THE CHAIRMAN: That is my feeling.

PROFESSOR FOX: I do not see how you can decide with any logic that it should be a figure in between.

DR. FORSEY: Well, on the assumption, as Professor Creighton suggested a while ago, that you want to give them some kind of inducement to come in.

PROFESSOR CREIGHTON: The province is depriving its citizens of a benefit which the Parliament of Canada is willing to give them.

PROFESSOR FOX: But presumably they will get other benefits by virtue of the amount of money,

if there is an equivalent of some kind being spent by the provincial government on something the provincial government thinks is important.

PROFESSOR CREIGHTON: It is evading what the majority of the population and of the provinces think is in the national interest. I think it should be penalized for that.

DR. FORSEY: Well, I suspect you will end up with 100 per cent.

PROFESSOR CREIGHTON: I am sure you will, too, but I do not think it is right.

DR. FORSEY: It is not one of the things on which I would be prepared to go to the stake.

PROFESSOR CREIGHTON: Neither am I. I am very loath to go to the stake on any of these things.

DR. FORSEY: There are some things I would be very nearly prepared to go to the stake for, but I do not think this is absolutely crucial.

When the business of opting-out of shared-cost programmes came up in the House originally, the late Wallace McCutcheon called me on the telephone and said what did I think of it. I said I had not had time to read the bill. He said: "Well, here is essentially what it says. Now, what do you think of it?" I said: "Well, I don't like it very well." He said: "It is coming up in caucus, and I want to know what you

think of it. I know you are not a card-carrying member of the Conservative party, but I would like to know what you think." I said: "Well, I don't think it is a thing on which you can go to the stake. You haven't got very good grounds for digging in your toes on this. The province is asking to resume the management of its own constitutional problem. I do not think you have got very good cause for objecting to it." He said: "You don't think it is worth splitting the party for?" I said: "No."

Well, I don't think this is worth splitting the country for.

THE CHAIRMAN: As it turned out, a bit of splitting took place in any event, did it not, in the instance you are speaking of.

MR. STEVENSON: Would there be general agreement about the sentiment at the top of page 7, that there is greater justification for shared-cost programmes in a capital area where you might be able to develop a specific time limit or specific cost, than in a continuing programme where you involve perhaps continuing interference in priorities over the years? This is, in essence, I think, the federal position too, and exemplified by their application of the opting-out formula to continuing programmes like the Canada Assistance Plan and hospital insurance, and

proposing new capital programmes.

PROFESSOR FOX: What is the logic of that?

MR. STEVENSON: I think the logic there is that if you can get agreement, that there is ---

PROFESSOR FOX: If you want to start the thing, is that the idea?

MR. STEVENSON: If you want to start the thing, something that is clearly definable.

PROFESSOR FOX: It is stimulation, in other words?

MR. STEVENSON: Yes. It may involve, by implication, a continuing interference in priorities if the construction then involves an operating programme to keep it going. The technical and vocational schools programme is a case in point; I suppose the health resources fund, building of medical schools.

DEAN LEDERMAN: And sewage disposal equipment, anti-pollution.

MR. STEVENSON: Yes.

DEAN LEDERMAN: This is terribly expensive, some of it.

MR. STEVENSON: There have been quite a number in the last few years, and most of them have had time limits and dollar limits.

PROFESSOR FOX: Does not this imply again that the federal government knows better than the provincial government what is important?

MR. STEVENSON: Yes, it does.

PROFESSOR FOX: And if it is sewage disposal, why would the federal government?

DEAN LEDERMAN: I do not think it necessarily implies that, but just implies that they can bring more money to bear, and that they have an interest in cleaning up the St. Lawrence-Great Lakes drainage system, for instance.

MR. STEVENSON: A good case in point, I guess, is bilingualism. If Ontario does want some federal money in this programme, we have two or three options. We ~~can take~~ the pure attitude that we do not want any federal money; that this is a purely provincial programme, so hands off. Or, we can, say, take the B and B recommendation and have a continuing federal payment for an estimate of operating costs of, say, 10 per cent of total costs over the years; or try to define very precisely what the capital problems may be and say: "Here, give us \$25 million in a lump sum to cover our share of our cost of building French language high schools", or something.

PROFESSOR FOX: This may be a hang-over from the days of the federal ascendancy in the 1940's or 1950's, when it was assumed Ottawa had all the good ideas.

MR. STEVENSON: Right.

PROFESSOR FOX: You can take some examples --

legal aid -- and say the provinces preceded the federal government and that they adopted the initiative there.

MR. STEVENSON: Would you suggest this be dropped?

PROFESSOR FOX: I am just questioning the logic. I have not thought about it in any detail before. I am just trying to see if there is any sound reasoning behind it, or whether it is just really a continuation of an assumption that may be involved. I don't know. It seems to me that if the country is moving in the direction which it apparently is, of government activity increasing in sectors that are primarily of provincial jurisdiction or concern you may have -- not because of the omniscience of provincial governments but because of clientele demanding services -- you may have new ideas and innovations coming from the provinces rather than the federal government.

DR. FORSEY: Yes, but even so, they might say: "This is a wonderful, new idea, but we cannot afford it. Can you help?"

MR. STEVENSON: I agree that that paragraph is a little bit inconsistent with some of the philosophy.

PROFESSOR BRADY: Which paragraph?

MR. STEVENSON: Top paragraph of page 7.

DR. FORSEY: Inconsistent with what?

MR. STEVENSON: Inconsistent with the general attitude that shared-cost programmes should be minimized.

DR. FORSEY: Yes, but are you still sticking to that rather rigid position, or taking up a kind of position that Professor Brady suggested this morning? If you are, then it seems to me you do not want to start putting yourself in a corner again.

If, of course, you are going to say that the only time you use shared-cost programmes is when you are in extremis, a desperate case, that you look at everything else in the world first and then this is almost the lethal draught which you will swallow only if you have the best possible medical advice that there is no other chance for you, all right; but I thought you had rather moved away from that position this morning. If so, I do not think this is inconsistent, except that -- oh, no, I think it is all right.

PROFESSOR BRADY: What does an expert on public finance like Mr. Perry say on the question that if shared-cost programmes have to be established, there would appear to be more justification for them in capital projects with specific time limits?

MR. PERRY: I keep wondering, as I am sitting here, whether what aggrieves the provinces is that the federal government started these programmes or that it stopped them. Sometimes I

think it is the second rather than the first.

PROFESSOR FOX: There seems to be the assumption here, too, that once having been started, the programmes can be continued somehow miraculously by the provincial government. Surely, for poorer provinces, there is no reason for assuming that, is there? Why will the provincial government be able to take over the costs in five or ten years time of a programme that was initiated originally by joint action? I do not see the logic in that part of the argument.

MR. STEVENSON: I think the word "capital" is the thing here. This refers to construction basically.

PROFESSOR FOX: Well, we know that there are frequently sizeable costs in maintaining your hospitals, for example, your post-secondary schools. Surely this has been the rub in a lot of these conditional grants as far as the provinces are concerned, particularly the poorer ones.

DEAN LEDERMAN: I wonder if the word "capital" is not just too general a word here, and that it would take a lot of questioning -- some capital project "yes", others "no".

MR. PERRY: Is not the whole spirit of the argument here that everyone agree or the majority agree before any of these programmes are instituted; that everyone understand fully all

the conditions that are going to govern? I do not see that whether they are capital or not is a very relevant consideration. It may very well be, as someone suggested, that the idea for some of these programmes may originate with the provinces rather than with the federal government. Under those conditions, I would think the same terms should govern.

I suppose one advantage of the capital projects is that the end is likely to be more visible at the beginning than in an operating programme. At the same time, if the conditions under which an operating programme will cease are clearly understood at the beginning, I do not really see that there is any difference here.

MR. STEVENSON: Is there any quarrel with the next paragraph? The possibility does exist here that if the federal government fails to get consensus through various means of instituting a shared-cost programme, that it then perhaps goes to a direct payment to individuals or persons. The one thing that was suggested here was that if there was a failure to get the Medicare proposal through, that the federal government would be quite able then to make a direct payment to individuals of an amount necessary to pay a Medicare premium, or pay a Medicare premium for them, something like this.

DEAN LEDERMAN: If it is declared a field of provincial jurisdiction, then I do not think the federal government should try to circumvent the provinces -- Mr. Hellyer to the contrary notwithstanding. He just left the government over this very issue. If an institution were to include municipalities, there you are.

PROFESSOR FOX: This is really supporting the Trudeau-Duplessis position on, say, educational grants.

THE CHAIRMAN: Trudeau-Duplessis?

PROFESSOR FOX: Yes, on the grants to the universities in Quebec, about 1951.

THE CHAIRMAN: I know they agreed. I can't ---

PROFESSOR FOX: They both agreed it was improper for the federal government ---

THE CHAIRMAN: The juxtaposition of the names.

PROFESSOR FOX: -- to offer money to Quebec universities, when the provincial government felt that it was an area exclusively for provincial participation.

DEAN LEDERMAN: To have the Central Housing and Mortgage Corporation performing a banking function for individuals buying houses does not bother me. In fact banking is a federal power, and banking for that purpose is as good as any other, but again it is too simple.

THE CHAIRMAN: Thinking about this question of the national or provincial or even municipal government doing the thing, let us say you have got a housing problem in Metro Toronto: a housing problem of the character of (1) an insufficiency of housing and (2) the down payments and interest rates beyond peoples' means and so on. Why should there be any presumption that the national government is any better equipped to deal with that very specific, clearly identifiable problem, than the provincial government -- or, for that matter, the local government? What is behind the stated and un-stated position that you keep reading about all the time, that urban problems are national problems and they are problems for the national Parliament? When you get right down to the particular manifestations of those problems, what peculiar magic is there that any level of government has over another -- apart from money? Is it not a matter purely of money?

PROFESSOR FOX: That is the explanation, historically, surely, for the federal government's participation in housing, is it not?

THE CHAIRMAN: Uh-hum.

PROFESSOR FOX: But I think if you were beginning all over again and proceeding from constitutional principles, you could have argued that at least it should have been a joint programme;

Central Mortgage and Housing might well have been a joint institution.

THE CHAIRMAN: The other thing is, of course, that if you say it can be readily done locally, should not maybe the province be making more tax resources available to the municipalities and letting them do it?

PROFESSOR MEISEL: I don't know whether this is far-fetched, Ian, but I wonder whether you could not argue, at least for the major metropolitan areas like Toronto and Montreal, that these really are national; that they play such a major role in the life of the whole country in the industrial, business and cultural sense, that one could perhaps argue that they provide services, and therefore raise problems, which are of national concern and not simply provincial concern; and that there is some substantive reason for thinking of them as being national? I am not sure I am right on this, but I think there is probably a good argument on this basis.

DEAN LEDEBMAN: I come back to what I said this morning: it is not "either or"; all three are eligible.

PROFESSOR MEISEL: Bill was complaining about municipal taxes earlier because of the fact he lives in Kingston. In part, I imagine, one of the reasons taxes in Kingston are so high is

because you have Queen's University which is un-taxed. and the local taxpayers are subsidizing students from all over the province and, in a sense, all over the country, and that it is unfair. Certainly the local council is up in arms about it.

THE CHAIRMAN: You have far and away the largest incidence of exempt property in any municipality in Ontario, twice the next level.

PROFESSOR MEISEL: That is because Kingston happens to provide educational, penitentiary, mental hospital, and other services -- all the necessities of life; and we provide a service to the larger field just as Montreal and Toronto provide somewhat different services to the country as a whole.

THE CHAIRMAN: Kingston -- the custodian of the nation!

MR. STEVENSON: Mr. Chairman, the next paragraph on page 7, where the example of Expo is brought up, might almost be used in this context.

THE CHAIRMAN: I have another little worry right now, and that is the next three items on the agenda and the time of the day. I think all of those matters are matters that involve some decisions, as a matter of fact, not that this does not.

PROFESSOR BRADY: Perhaps, Mr. Chairman, we have said really enough about this to give a

lead.

THE CHAIRMAN: I think we have the spirit. This is far from definitive, and we have a lot of work to do.

PROFESSOR BRADY: I think at the bottom of page 7:

"Precisely in the growing area of
"overlapping jurisdiction there is a new
"set of problems"

It would be advantageous to cite an example or two there, would it not, to make the point more concrete?

MR. PERRY: Don't put down more than fifty.

MR. STEVENSON: There are plenty.

Mr. Chairman, we would very much appreciate comments from anybody here. If they have marked-up copies of the papers, send them in by all means.

THE CHAIRMAN: We would like to develop this further. Send them along.

MR. STEVENSON: We would like to be able to have a new version of this paper for setting up for internal approval and sending it to the committee of officials.

THE CHAIRMAN: Which meets on May 22nd.

MR. STEVENSON: Right, within the next couple of weeks.

THE CHAIRMAN: Item 4: Gary, how far did you intend to go into this subject and in what way?

I gather this means a certain amount of exchange of opinion on the Atkey papers.

MR. POSEN: Really 4 and 5 tie in. There was some discussion at the last meeting (which unfortunately I was not here for) which has been perhaps that the two Atkey be included in a second volume of background papers and reports. It was just a question of in what form they were going to be included, if the objections that were raised at the last meeting were so strong, and if some of the objections can be met. We are open to discussion on that.

PROFESSOR FOX: Might print them with a supplement from Dr. Forsey.

THE CHAIRMAN: Rejoinder and reply!

DR. FORSEY: I am sorry to say that I see no reason to change my position, in spite of my veneration for Professor Lederman, which he knows well is heart-felt. I still think this is a most dangerous production, and I think you have got to consider that in the light of the psychological climate existing in the Province of Quebec, this would be just duck soup to people like Cardinal, for example. I know the kind of use that would be made of it.

I think there is a great deal of spurious learning put forward in the first part of the thing. There is, to my mind, the absurd statement

that the two sides of the argument are equally valid, or words to that effect. I confess I have only glanced through what Professor Atkey says in reply, but I have gone through one or two of these things rather carefully, and I notice he emphasises here again his presumption of validity of provincial action. If you read that in conjunction with his proposed new section 132 I still say it would just lead to a re-play of the whole development of dominion status. This does not bother him at all, because he makes the statement (which I think is historically grossly inaccurate) that Canada in 1867 was given dominion status as a member of the British Empire. It was created a dominion, of course, but there was no such thing as dominion status then, nor for long after. Then he says that Canada after 1867 gained complete international capacity. Of course, she gained political independence but not vice versa. She gradually gained international capacity and this was the way in which she arrived at political independence. This is exactly my point. I think he got the whole thing absolutely upside down.

When he says at the bottom of page 2:

"It would seem that Dr. Forsey's case

"has already been well put in the two White

"Papers by the federal government"

Indeed it has, much better than I could put it;

but the thing I was alarmed about was that this thing should come out in a document issued by the Queen's Printer of Ontario without any statement of the counter-case.

As I said in the document I sent in to the secretariat (which got around, I think) if you publish this by itself, no matter with how great a cloud of disclaimer, it would be taken as something showing the tendency of thinking, the current of ideas in the Ontario government on this subject. If that is the way the Ontario government feels about it, of course, there is presumably no particular objection to that; but if the case has not been pre-judged in that direction, then I think it is undesirable that this should appear by itself. I would strongly object to its being published in any volume of background papers unless there is a clear and cogent statement in the same volume of the case against Professor Atkey's proposal. I stick to it, and I think they are a primrose path.

THE CHAIRMAN: I take it your criticism, Eugene, is in two parts. First of all, you have some professional criticisms of the paper as such. Then there is the other point you have just made now, that you disagree with the philosophy, which could be taken to represent somehow this Committee or the government.

DR. FOFSEY: Yes.

THE CHAIRMAN: There are two strands, I take it.

DR. FORSEY: Yes.

THE CHAIRMAN: Bill, your opinion on these matters, do you differ on both points?

DEAN LEDERMAN: I am afraid I do. I think, as I say in the letter that has just been distributed (which most of you have not seen before) I say on page 2:

"I think the Government of Quebec has
"acted in bad faith and has been up to some
"monkey business. In view of this, I
"believe the strong federal reaction was in
"order. On the other hand, as Atkey has
"shown, there are simply inevitable trans-
"national projections of official activities
"by the provincial governments in provincial
"subjects -- projections beyond their own
"borders. What has happened is, I believe,
"that Quebec's bad faith and devious
"behaviour has aroused a very defensive
"attitude in the federal government -- and
"between these two things the true nature
"of the problems and the true interest of
"a province like Ontario are being lost."

Dr. Forsey is quite right to pick up
Professor Atkey on his editorial shortcomings, and
this is a matter of editorial correction. Where

he has got his history wrong, this can be corrected too, but to me this is not now basically an historical question. The number of transactions and relationships that cross borders are now so great and so complicated and so numerous, that the provinces are going to have to play a part.

I do not see Professor Atkey's position as so very different from the position the federal government has taken in its White Paper. I do not think that these two things are in collision. I do not think that what Professor Atkey proposes is going to lead to the development of provincial status and powers for a lieutenant-governor in provincial cabinets parallel to the development that occurred in powers for the federal cabinet and the Governor-General.

I do not think if, in fact, you do what he says and write a new one in 32 -- and that could be editorially improved too, (what draft could not be improved?) -- if you do that, you preclude the conventional development, and it has to go the way it is written in the new clause.

He proposes, among other things, an executive veto for the Governor General-in-Council in the federal cabinet on what he calls provincial trans-national activities. That is a very considerable safeguard, I should think for the "one Canada" in foreign affairs.

The agreements that the province has already had are in effect agreements in an era of reciprocity, on tourists, on trucks and busses running across borders. There is a great deal here, and I think this is one place where we have to work out some genuine cooperative federalism, and it has to be somewhat formalized.

I do not think that Professor Atkey is in collision with the federal government on the "one Canada" idea, I do not think he intends to be. As I say, he would probably be willing -- and I have only had a chance to glance rather quickly at his reply to Dr. Forsey's memorandum -- I think he indicates that he would be willing to sharpen up the point that he is not in collision with the federal view; but there is something of great complexity here that is growing and, like everything else in federalism, the thing is getting more complex, and the old ways have to be modified. I would not play with the hands of the Quebec nationalists or separatists on this; I think you have to be very careful about that.

The other issue, whether the volume of Ontario background papers is to be taken as the opinion of the Ontario government, and the extent to which it is: whether one does good or one does harm by publishing any views in any papers under these auspices, that is another question and it has

to be considered and discussed too. I think we canvassed this before when we had these fears.

THE CHAIRMAN: We went through the principles, certainly, and there have been questions asked about particular items in the books in the Legislature, as you know, and elsewhere, and the answer has always been: "These are the views of the individuals."

DR. FORSEY: Quite, but this again does not affect the point that if you get one view stated and nothing counter to it, you are in a different position from what you are with the first volume. The first volume had more variety of views in it, and you could always say that not only is this the view of the individual but there are all kinds of views in here.

DEAN LEDERMAN: I am sure the Queen's Printer in Ottawa would give permission to the reproduction of some of the passages from the federal White Paper.

MR. STEVENSON: I think in the first volume we did have two articles on this subject -- three: Professor Laskin, Mr. Delisle and Professor McWhinney; all of which stated very strongly the necessity to maintain the single Canadian voice in international affairs in a legal sense at any rate.

DR. FORSEY: Yes, but none of them tackled this particular kind of thing he does here.

benefits, it has to be mainly provincial people, because that is where the expertise is at the moment.

DR. FORSEY: Who is objecting to that? That is all in the federal White Paper.

DEAN LEDERMAN: This is Mr. Atkey's main point, as I read him, and why I say he and the White Paper are not in collision.

DR. FORSEY: That is not what he says in his draft new section, not as I read it at all.

As far as I can see, a whole lot of these trans-national activities that are going on, nobody has the slightest objection to them. They have been going on for years, and nobody has raised any legal obstacle to them as far as I know; and for the further development in certain fields like education and so forth, as Bill just mentioned, the proposals in the White Paper seem to me to cover the thing quite well. There may be some modifications in them, but just look at that proposed section:

"The Parliament and Government of Canada,
"the Legislature and government of each
"province, shall have all powers necessary
"or proper for entering into direct
"relations with foreign states and
"international organizations and to
"conclude agreements and to place or

"exchange governmental officials with them" and the obligations part, subject to certain things. Then comes, of course, the veto which the central government would have, but you have to read that in this Paper. The veto by itself looks well enough, perhaps, but you have to read that in this Paper in connection with the whole section, in conjunction with two things -- the initial presumption of validity of these provincial activities in the sphere of foreign relations, and the statement that the veto would be brought into operation only in the most extreme and extraordinary cases.

THE CHAIPMAN: I would like to make this suggestion. I do not know how many people have had an opportunity to read these papers, with any thoroughness, at least in a manner that would help them to make some decision. There is also the prospect that if one went ahead and published this, that perhaps Eugene or somebody might do a rejoinder, although this would change the character both of this book and our two books together. We have not attempted to debate in these books; we have attempted to present sets of individual views. I think we would want to ponder that fairly well.

We may want to meet on the third Friday of June in our regular meeting, and postpone a

decision on this. I think we have no alternative but to postpone it if it is a serious issue. We have circulated the proposed table of contents so far among the other contributions we have had. I do not know whether, generally speaking, this commends itself to you or not, but we could certainly get on with the editorial work and preparation. Professor Conway and I, I think, both have a little work to do to complete the work we have, and if that could be done ideally also by the June 20th meeting -- I don't know what your timetable is.

PROFESSOR CONWAY: It will; it has to be.

MR. STEVENSON: We had talked about the end of May, earlier.

THE CHAIRMAN: I mean, in in time to be circulated, be read by the Committee and be back in a position to comment intelligently on it on June 20th. We might be able to wrap this whole issue up in that way at that time, and still have the staff work and the editorial work done in the preparation of the other material for the book.

PROFESSOR FOX: I am afraid I have been remiss in my reading, Mr. Chairman. I have not got through these two Atkey papers and I cannot contribute anything to the discussion. I don't know whether other members of the Committee are in that position.

REV. FATHER MATTE: I do not remember having received them. Anyhow, I will read them for sure and be able to make some comments next time.

DEAN LEDERMAN: I think, Mr. Chairman, they should be more widely read before we reach a decision.

THE CHAIRMAN: Could we make the main purpose of our June meeting the discussion of and decision on these papers, and also any matters of discussion that you might want?

I would certainly welcome some on this thing which was not suggested by me but was put to me by certain people, about putting a paper. I have some doubts about the Janus position which you create for me, but I am prepared to go ahead anyway. It won't be very contentious, I think. Would that be agreeable as a procedure?

PROFESSOR BRADY: Agreeable.

MR. STEVENSON: Are there any other problems about the table of contents?

MR. POSEN: Professor Lederman, I think the last time you mentioned you wanted to take your two papers, meld them into one and bring it up to date.

DEAN LEDERMAN: I would like to look at them and see if they can't be put into one, because one would just supplement the other after we got more

information.

THE CHAIRMAN: You could ponder that one meanwhile, too, Bill.

DEAN LEDERMAN: That is a simple matter.

MR. POSEN: The other question is on Dr. Brady's paper, the June 1967 one at the C.P.S.A. meeting: if he was interested in having that go in this volume; or the contribution in the Canadian Banker, if he was interested in seeing that appear in this volume.

THE CHAIRMAN: I just wonder if there are not any other papers that we might include here for balance. I don't know how big a book this will be.

PROFESSOR CONWAY: We have a new contributor, I see, one "F.G. Creighton".

THE CHAIRMAN: Yes, along with "J.I. Macdonald".

PROFESSOR MEISEL: What is the deadline on this? Ron Watts has just gone off to Nigeria.

DEAN LEDERMAN: That paper is finished.

THE CHAIRMAN: It is finished, in our hands and approved by him.

PROFESSOR MEISEL: He asked me to ask you that if there are any changes to be made he could not make them until he comes back. That was the message.

THE CHAIRMAN: When is he coming back?

PROFESSOR MEISEL: In about a month, I think.

THE CHAIRMAN: That is all right. He said he did not think he would have much to worry about, but if he is back in Canada ---

PROFESSOR MEISEL: I think your reaction, if you had some objections he wanted to look at them before ---

THE CHAIRMAN: Professor Brady, what about the suggestion of one or more of your papers, subject to the agreement of those wherein they appear?

PROFESSOR BRADY: Ed Greathed was talking to me about the possibility of using the paper on the federal-provincial conference. Actually I had intended to expand that paper with more research on it and to complete it, which I have never been able to do through other work, and I have not really read it recently. I would like to examine that. I asked him to read it and give me his comments as to whether it would be useful. It would be advantageous if other people might read it and see whether it has much interest, really.

THE CHAIRMAN: Is that the "Canadian Banker" paper?

PROFESSOR BRADY: No, this is a paper on the federal-provincial conference.

THE CHAIRMAN: I remember.

PROFESSOR BRADY: I think it needs another look; at least it needs to be looked at, and I would like to read it again and decide about it.

MR. STEVENSON: Ed expressed to me the suggestion, Dr. Brady, that because of the discussion at the last meeting it might be desirable to have as much as possible in on the distribution of powers; that in some respects your Canadian Banker paper, as is or amended, might even be more appropriate as an additional paper or as the paper. That was only following up, I think, the feeling at the last meeting that we were a little weak on the distribution of powers.

THE CHAIRMAN: Let us let Professor Brady take a look at his papers and let us have an opinion, would you?

If there are no other matters there -- item 6, "Report of the Cultural and Liguistic Sub-Committee".

PROFESSOR BRADY: I think I wrote a letter to you, Mr. Chairman, which embodied very briefly the substance of the discussion.

THE CHAIRMAN: I passed a copy of that letter along, or did I? I think I may have asked Ed to check with Professor Brady to see if it was in order to pass a copy on to the Prime Minister, or else I did. I can't remember which.

PROFESSOR BRADY: I don't know what you want to do, Mr. Chairman. I could leave that here. On the other hand I do not know that there would be very much point to that. Could it be run off and copies sent?

THE CHAIRMAN: Well, absolutely.

PROFESSOR BRADY: I think that would be better, and if there were any comments about it or questions raised ---

THE CHAIRMAN: Could we reproduce this, Gary, and send it to the Committee, with the notation that we would like to have any comments on it that would then be a basis of discussion subsequently? I am quite certain that, if not the full report, I passed along the gist of it to the Prime Minister.

PROFESSOR BRADY: I don't think it would do any harm.

THE CHAIRMAN: No. Then our next meeting will be both for the principal purpose I mentioned of settling these papers, for bringing you up to date and initiating any discussions and work that might be appropriate after the June meeting of the Constitutional Conference, and for setting off on our summer work. I would propose that the meeting be on our regular or statutory date, Friday, June 20th. Would that be acceptable? It does not seem to conflict with any long weekends. You will be away, John?

PROFESSOR CONWAY: I shall have gone by then.

THE CHAIRMAN: I thought you were going the next week.

PROFESSOR CONWAY: I am not exactly sure, to tell you the truth.

THE CHAIRMAN: Why don't you go that night? You could go off in a good mood from an all-day meeting of this Committee; go right from here on to the airplane.

PROFESSOR CONWAY: That doesn't say I would go at all.

THE CHAIRMAN: It would be kind of nice if you could be there, if possible, because of your paper being on there.

PROFESSOR CONWAY: Of course, I know, but the thing is I am tied to a schedule and I just don't know whether it is the 20th or 21st. I will find out for you.

THE CHAIRMAN: Okay. Any other business? All right, thank you very much.

--- The meeting adjourned at 4:40 p.m.

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ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

M E E T I N G

held at

The Frost Building, Queen's Park, Toronto

on

FRIDAY, JUNE 20, 1969



VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

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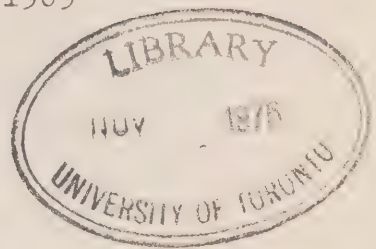
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FRIDAY, JUNE 20, 1969



VERBATIM REPORT OF PROCEEDINGS

ONTARIO ADVISORY COMMITTEE ON CONFEDERATION

Meeting held in the Board Room, 6th floor,
The Frost Building, Queen 's Park, Toronto,
on Friday, June 20, 1969.

PRESENT:

Mr. H.I. Macdonald (Chairman)

Prof. A. Brady

Prof. J. Conway

Prof. P.W. Fox

Dean W.R. Lederman

Prof. E. McWhinney

Prof. J. Meisel

Mr. J.H. Perry

Mr. R.N. Seguin

Prof. T.H.E. Symons

Mr. F.W. Callaghan

Mr. D.W. Stevenson)	
Mr. R.A. Farrell)	Co-Secretaries

Mr. E. Greathed)	
Mr. C. Beer)	
Mr. P. Lishchynski)	Secretariat
Mr. A. Murray)	
Mrs. J. Wilensky)	
Mr. J. Wouters)	

--- At 9:45 a.m.

THE CHAIRMAN: Maybe we can begin. Those who will not be present today as far as I am informed, are Eugene Forsey and Father Matte.

This presumably will be our final plenary meeting before the summer or during the summer months, and I think it is a convenient time to review the fairly numerous events of the last few weeks in both the ministerial and official front in the Constitutional Conference, and perhaps to think ahead of the work that we shall be undertaking during the summer.

The only other point I had to make by way of opening remarks, was to ask Mr. Greathed if he would introduce a new member of his staff to the Committee.

MR. GREATHED: Yes, Mr. Chairman. As some of the members may know, we are very regrettably losing Andrew Murray at the end of this month. Andrew is going back to the greener pastures of Britain.

THE CHAIRMAN: Brain drain.

MR. GREATHED: We regret the loss very much, but we are very fortunate in having John Wouters as an addition to the staff. John, would you just stand, although you are going to tower over everybody. John comes to us from McMaster and the University of Alberta and has just joined us this week. His will be a familiar face around here.

We shall also be losing at the end of this month Colleen Malone, and we are hoping that her

replacement will show up some time in September.

THE CHAIRMAN: I guess Andrew will go back to survey at first hand the changing constitutional scene in the United Kingdom, and Colleen Malone will go out to teach French in the schools. I suppose, in a universal sense, we cannot really complain about either of those ventures. However, we are sorry to lose them, and I am sure I speak for members of this Committee as well in terms of the contacts that we have had.

Coming to the first main item of business, Item 2, as you know, we held meetings of the officials towards the end of May (a two-day meeting) and in the last week of May there were meetings of four ministerial committees -- the judiciary, the Senate, official languages and fundamental rights; in the second week of June, a meeting of the ministerial committee on regional disparities; then, of course, the planned three-day and ultimately two-day prime ministerial meeting in that same week.

The meeting in May of the officials consisted principally of further discussions of the spending power and the taxing power. We were in a position not only to offer comments on the federal papers arising in large part out of the assistance we had had from members of the Committee in commenting on those papers, but also to put forward our own two papers, which, incidentally, were tabled on Tuesday of this week in the Ontario Legislature.

As a result of these meetings. I think most of the issues involving those two areas were out on the table and clearly understood. I will ask perhaps Ed Greathed and Don Stevenson to comment in greater detail on this matter or to answer questions you might have.

I did not attend myself that full week of ministerial committees. Mr. Greathed did. I gather that the pace was uneven, although the motivation was strong, and the work, shall we say, still remains, I think, in all those areas, at its preliminary stages.

The meeting on regional disparities, again the spirit of cooperation was strong but it is a terribly tenuous subject, and I do not think that one can say that the fundamental issues were advanced much further, at least the dealing with the issues; but there is no doubt that Mr. Marchand personally, and his program, I think, were well received and, I think, a good spirit was evident in that meeting as well.

I thought myself the meeting of the first ministers was in many respects a great success. I do not think that what was said or what was not said necessarily differed very much from what might have happened in public meetings under the television camera. I think the principal difference was that it happened more quickly and it simply meant people were able to come to the issues quickly. It was not necessary for each person to display the full range of his comprehension for a broader audience.

If some other first minister said something with which he agreed, he did not have to also concur in any extensive manner. As a result, I think things moved along very well and hence the two-day meeting.

I think the feeling of our own Prime Minister and of many other people, was that although to some outsiders it might appear as if this were a slow and plodding pace, the discussions that took place in those two days would have been inconceivable certainly ten years ago and perhaps even five years ago. There is no doubt that the kind of discussions that took place about the taxing power and the spending power in particular obviously had far-reaching implications for federalism and for Canada.

The interesting thing to us was that more and more of the provinces, more and more often, are coming into a searching consideration of what the issues are about and what they mean. I think the attitude somewhat of indifference to the exercise that existed a few years ago on the part of some of the provinces, has certainly been overcome and there really is, I would say, very full and very complete participation.

On the other hand, those discussions are obviously at a preliminary stage. When one comes down to talk about formulas for implementing them, the great question will be whether the course of events is any easier than that which surrounded the Fulton-Favreau formula, for example, and how

one can overcome perhaps the sharpest element of difference in the fundamental thinking, both about the spending power and the taxing power, which really comes from British Columbia. Others perhaps manifested various degrees of unease, but British Columbia has made a very sharp and very particular point of difference with the fundamental philosophy. How those things will be reconciled over time remains to be seen.

I think that is all I really would have to say, except that the pace, again, of course, will be affected in part by the political timetable. It was interesting that, without presuming to judge his political motivation, that in the midst of a general election campaign and two weeks before the election Premier Weir of Manitoba saw fit to take two days and come to Ottawa in a closed meeting. Again looking at it from the point of view of a politician, one could understand it if it were a national, televised meeting, but I think it says something about the depth of concern and interest for these questions that that should have been the case.

The appearance in the early fall of an election in British Columbia and/or in Quebec or elsewhere, would perhaps account for the fact that the original thinking was to have another closed session in October, say, and then another public plenary session perhaps in December before the end

of the year. I do not know what transpired in the closed meeting that the eleven heads of government had on the final afternoon.

MR. STEVENSON: Two degrees of "closed".

THE CHAIRMAN: Well, however closed it was, out of it they came back with the view that there would simply be another meeting before the end of this year. So perhaps some of their various political timetables were not taken into consideration. I am sure they were.

That is really what I have to say on it. I do not know if Don or Ed wants to make any other observations. Then perhaps there are some questions.

MR. STEVENSON: I wonder, Mr. Chairman, if perhaps I might just quickly refer people to the consensus.

THE CHAIRMAN: Yes, I think that would be helpful.

MR. STEVENSON: The oommunique.

MR. GREATHED: Which has been distributed.

MR. STEVENSON: Perhaps if we went through that slowly, we might clarify some of what went on.

It starts off with the agenda which, as Ian said, was largely devoted to Item 1, the taxing power and the spending power, which carried over into the morning of the second day, with Items 2 to 5 taking up the remainder of the Thursday.

The first paragraph following that

entitled "General" was a caveat that was put in really after the general agreement on the principles following. The federal government, I think, was particularly sensitive to some of the charges that had been made by Mr. Hellyer or others, that he was giving away too many of its powers. So, as you see, it wanted to get in a point to say that all of its agreement to the following was conditional on a distribution of legislative powers that assured a strong central government.

The obvious come-back from Ontario, Quebec and others was to take the federal phrase out of "federalism for the future", that the distribution of powers should result in strong central government and strong provincial governments: therefore, the final sentence in that caveat.

These two or three sentences in the "general" paragraph relate to both the taxing power and spending power agreements. Perhaps I could read the paragraph which straddles the page:

'With one exception --- "

which was British Columbia:

"---, the first ministers agreed that

"Parliament and the provincial

"legislatures should generally have

"access to all tax fields, the power

"of the Parliament of Canada applying

"across the country and the power of

"each provincial legislature applying

"within that province"

The B.C. position was that instead of having access to all tax fields, there should be a strict constitutional division, with the federal government having the power of indirect taxation and the provinces direct taxation, with the exception that the federal government should have enough leeway in the direct taxation field to provide for a negative income tax across the country. This the federal people countered with figures to show that this would emasculate the federal government pretty severely.

"In applying this principle, the

"following objectives were accepted

" (i) The 'within the province'

" limitation of provincial taxing

" powers should generally be

" applied with respect both to

" direct and indirect taxes, so

" as to protect the taxpayer against

" the taxation of his income,

" property or purchases by more than

" one province."

This was placed in pretty general terms and only as objectives because there are a number of situations in actual taxing practice where you cannot avoid some kind of extra-provincial taxation.

MR. PERRY: This was horribly emasculated

by the press in any comments I saw. They just did not understand it.

MR. STEVENSON: In the first draft, instead of it being "following objectives" it was much tighter language, saying that "the following specific points were agreed on" or something like this; but this in effect is a somewhat sharper stricture than now exists, in that it has been effectively interpreted that the provincial power of direct taxation does not include with it a prohibition against taxation of incomes, transactions, or property outside the province.

There had been some discussion of Article 121 in the B.N.A. Act prohibiting inter-provincial tariffs in effect; with the conclusion being that it has been interpreted rather narrowly and has not been a very effective impediment to provincial taxation that would have extra-provincial effects.

" (ii) The taxing powers of both
 " Parliament and the provincial
 " legislatures should be limited
 " so as to avoid the erection of
 " 'tax barriers' to interprovincial
 " trade, and the power to impose
 " customs duties should continue to
 " be confined to Parliament alone."

The final, of course, is a direct exception to the principle of access mentioned in the general clause earlier:

" (iii) Considering that both
 " Parliament and the provincial
 " legislatures would have access
 " in general to the same sources
 " of tax revenue, there should be
 " more regular and adequate
 " federal-provincial consultations."

Some of the provinces really wanted to make this much stronger: that in addition to there being regular and adequate federal-provincial consultations, it include something like:

"There should be more regular and
 "adequate federal-provincial consultations
 "with a view to ensuring an allocation of
 "revenues commensurate with expenditure
 "responsibilities"

I think that was a little too strong for the federal government.

PROFESSOR BRADY: Was there any discussion of the body that might prepare views on allocation?

MR. STEVENSON: There was. It was surprising to me there was not more discussion at this point. There was a lot of discussion at the civil service meetings in April and May on the question of inter-governmental machinery, the possibility of an inter-governmental tax collection body, the possibility of a much more institutionalised review process of occupancy of tax fields, and relationship to expenditure responsibilities; but

during the prime ministers' meeting this whole area, I think, was put off rather lightly at this point, with the idea that it would definitely come up again when one is discussing machinery and the actual sharing of tax fields in the Tax Structure Committee discussions. However, there is no question Ontario is going to raise it. It will not be left off for very long.

PROFESSOR McWHINNEY: It was not thought the Tax Structure Committee would fill this gap, was it?

THE CHAIRMAN: No.

MR. STEVENSON: No, although I think some of the federal people feel that the Tax Structure Committee has the key more so than perhaps our own Prime Minister feels that key decisions on allocation can only be taken by heads of governments. I think that Mr. Robarts has a healthy scepticism about the ability of Mr. McNaughton to bend Mr. Benson.

DEAN LEDERMAN: Mr. Chairman, these are commendable principles, but there are enormous difficulties in the implementation of them. Within the province you immediately come up against the problem that many of the significant forms of wealth today are intangible; they have to have location attributed to them. They are real enough, but they are intangible; they do not have a location in nature like a table or chair. That is one of the big philosophical problems to deal with that phrase "within the province".

The other is attributing location to the owners that you are going to tax -- domicile, residence.

PROFESSOR McWHINNEY: Citizenship.

DEAN LEDERMAN: Citizenship, whatever you want to call it. I do not say these difficulties are insuperable, but the drafting of the substantive tax laws involved (never mind institutions) will be quite a task. For one, institutionally that limitation is impossible without one final, judicial tribunal of interpretation to say the last word on the location of property, and to say the last word on domicile. If you have that, you can make it work; if you do not, you will get double taxation and there will be no way of stopping it. Manitoba will attribute location of the assets of an estate to Manitoba; Ontario will attribute the assets of the taxpayer in Ontario to Ontario. They will both tax as if they were both right.

PROFESSOR BRADY: Constitutional lawyers will have plenty of work to do.

PROFESSOR McWHINNEY: It is not really so difficult, though. You took conflicts of law as I did, and the location of property was something that was worried about, and even the issue of domicile. There was some suggestion, and I remember Jean Noel Tremblay talking about citizenship within a province.

I think your real problem here is the determination among competing priorities. For example, I think it is not politically desirable that a province and the federal government should impose income tax to the limit. There is a problem of priority in collection then.

You come back really to the need for sophisticated institutional machinery. While the Tax Structure Committee can provide a base for this, this obviously has not the comprehensiveness nor the staff, nor (in the ultimate) the power of decision-making, the power of establishment of priorities in this area, has it, as things now stand?

THE CHAIRMAN: No.

PROFESSOR McWHINNEY: What you really need is a 300 per cent improvement on this Australian constitutional machinery, and that does not work terribly well there, with a much smaller problem to discuss and with the problem anyway decided in the federal government's favour by well-established supreme court decisions.

This is really brilliant as a philosophical principle, but unless there is some thought put into the machinery it is not going to work.

MR. PERRY: With respect, I disagree with this. There has been an awful lot of thought devoted to this basic problem of domicile and situs and taxing power (federal, provincial) over the last quarter century.

PROFESSOR McWHINNEY: I did not disagree with you there. I disagree with Bill.

MR. PERRY: With the sort of practical things that have been worked out now, I do not think there will be problems; because the situation became utterly chaotic during the depression and governments were forced to develop some working solutions. These have never emerged to the level of the Supreme Court; nor are many of them set out even in statutes. They are, in many cases, simply working rules between levels of government. The main thing is they are working.

I read this simply as an attempt to codify what is almost now the position, rather than setting up an entirely new philosophical concept.

MR. STEVENSON: In a sense one of the ways that it has worked so well is because for the direct taxes (except for Ontario, Quebec and B.C. in the case of succession duties) there has been the instrument of the federal collection machinery for the provincial taxes.

MR. PERRY: That is right.

MR. STEVENSON: Which has enforced an inter-provincial agreement. In addition, there was agreement on how the corporation tax revenue should be shared, that ended a long battle in the early 1950's.

MR. PERRY: One thing that has not really been much of a problem is the use of a provincial

indirect tax in the sales tax area. I gather from the explanations that have been given of the Item 1 here, that the intention is that this power be limited to a retail sales tax on an indirect basis, rather than at the manufacturing level.

MR. STEVENSON: That has been left a little vague here. The federal position is certainly that because it seems almost impossible to devise a mechanism of preventing the problems listed in Items 1 and 2, the provinces have imposed manufacturers' sales taxes; that therefore in practice these limitations would confine the provincial indirect taxes to the retail level.

This is not necessarily accepted by the provinces for all time, because obviously one might be able to work out safeguards; but there is no desire expressed by any province to move into the manufacturers' tax field. The federal government made it very clear to the other provinces that if the provinces did, Ontario would be at a fantastic advantage by being able to tax well over 50 per cent of the total manufacturing in the country.

MR. PERRY: At the source.

PROFESSOR McWHINNEY: Why does Ontario want to move in?

MR. STEVENSON: The Ontario government at this point certainly has no intention.

PROFESSOR McWHINNEY: It does not need to, financially, but at some later stage, as it were, it

might wish to under this. Is that not your problem?

MR. STEVENSON: Yes, I think our basic position was to ensure that the principle of access was stated as broadly as possible, but that the particular safeguards be worked out during later discussions.

There is a big question as to what degree of codification these limitations should take. If it appears that perhaps through machinery and through discussions it is difficult to work out a method of ensuring that limitations 1 and 2 are adhered to, then perhaps an attempt will have to be made at some kind of constitutional drafting to improve on Section 121.

PROFESSOR McWHINNEY: Harvey, I did not mean to suggest that situs, locus and so on were decided. That is the point I was making with Bill. We were both "conflicts of laws" professors at one stage. I feel the legal rules here are reasonably adequate, and I was just talking about the priorities. For example, the Province of Quebec, with chronic deficits into the foreseeable future, may wish to get into areas where the federal government feels for the general, introductory principles of compromise. It is conceivable the Province of Ontario may want to get into this manufacturers' tax field at some later stage. I think your problem really is the key one of power to decide among the priorities (such as the Tax Structure Committee has

discussed) sophisticated enough in its institutional arrangements. and has it established the principle of who has final say sufficiently to work? If not, you are obviously going to need some sort of new constitutional machinery.

DEAN LEDERMAN: Mr. Chairman, I just want to enter a caveat to my own views in relation to what Ted has been saying. This is a strange point for Oxford to be making to Yale, but the point I would make is this. If we are going to keep out of double taxation and financial fragmentation, this puts a great premium on one single judicial system in the country with one final court of appeal for the whole country; so that when it comes to interpret and construe facts in relation to these definitions there will be one authoritative system.

In the United States there was the famous Campbell Soup case, where the whole of the estate of the owner of the Campbell Soup Company was just eaten up because both New York and New Jersey taxed 100 per cent. Under the constitutional doctrines that prevailed in the United States, the state courts had the last word, and the Supreme Court backed off.

PROFESSOR McWHINNEY: The federal Court of Appeal should really have been asked. The second circuit would have disposed of it.

DEAN LEDERMAN: They backed off, as I recall.

PROFESSOR McWHINNEY: You will agree though,

Bill, that an appropriate administrative body -- for example, a standing dominion-provincial tax institution -- could conceivably make the same sort of decisions and allocations as a court. It does not necessarily have to be judicial; it has got to be final.

DEAN LEDERMAN: I agree with you: if it is going to have the last word, there are a number of bodies to which you could give the last word.

PROFESSOR McWHINNEY: But it has got to be the last word.

DEAN LEDERMAN: It has got to be the last word for the whole country, federal or provincial.

MR. PERRY: I think Ted's point is the main one, that this is a matter of taxing priority rather than legal rights. It is quite clear that during the depression there could be triple taxation of estates, all within the legal rights of the taxing jurisdictions. It was only because governments agreed that this was a shocking condition, without any change in the basic legal powers at all, that that has been avoided.

DEAN LEDERMAN: Harvey, I am not quarrelling with that.

MR. PERRY: No, I do not think we are quarrelling about anything, really.

DEAN LEDERMAN: I agree it is the federal-provincial tax agreements that have saved us, that have extricated us (if you like) from these

difficulties. You do not have the equivalent of them in the United States, I do not think.

MR. PERRY: No.

DEAN LEDERMAN: But does Number 1 mean that we are going to maintain the existing type of federal-provincial financial agreements? I rather read it as implying that we were going to substitute some constitutional provisions.

MR. STEVENSON: Not necessarily. I think, Mr. Chairman, the federal people have said that for the time being they seem to be happy about the inter-governmental rules that have been agreed on in the corporation tax, for instance; that if similar agreements can be maintained, then they do not see the need for something more rigid; that if it appears that because of the freer access of the provinces generally to other fields, that the agreed-on rules are in danger of being abrogated, then they will press for something more rigid, but not necessarily at this point.

DEAN LEDERMAN: You see, in Number 1 they are listing the "within the province" phrase right from the B.N.A. Act, and that is what set me thinking that they are thinking in terms of an amendment of the Act that will perform the office of the federal-provincial agreements.

I agree with everybody who said that the very good way of doing it, and perhaps the best and only way of doing it, is to continue the federal-

provincial agreements. That means that you continue really with a single tax system which is in the hands of the federal government largely, and with the provinces sharing the harvest.

If you want to run your own tax system and your own system of depreciation and depletion allowances and all the rest of it, and not accept the overall agreement in the country about this or accept what is in the federal Income Tax Act about this: then this is the point at which I am trying to say great difficulties arise.

MR. PERRY: If you are not going to disturb the existing legal powers, then the provinces can individually tax either on the situs or domicile basis, and end up both taxing the estate very heavily. I do not know that even (i) affects that very much, because within these legal powers they are taxing within the province.

DEAN LEDERMAN: But they go on to say:

"... should generally be applied with

"respect both to direct and indirect

"taxes, so as to protect the taxpayer

"against the taxation of his income,

"property or purchases by more than one

"province"

In other words, to protect him against double taxation. The present doctrine does not do that.

MR. PERRY: This is putting the lions in the ring together. Somebody will have to decide

between these two bases of power, then.

PROFESSOR McWHINNEY: Yes.

MR. PERRY: To determine which rights prevail. Then you are really into the courts.

DEAN LEDERMAN: Then we agree that we are talking about the courts or some other institution.

PROFESSOR McWHINNEY: Or some other institution. I rather think a non-judicial body would be better, but it has to be a little more formal and a little more institutionalized than the Tax Structure Committee.

DEAN LEDERMAN: A rose by any other name ...

PROFESSOR McWHINNEY: No, it has got to be something like the Australian Loan Council, at least as solid as that, but, of course, much wider powers.

THE CHAIRMAN: Not to distract us from this, but, Harvey, could you embellish a bit the point you made earlier when you said this was a very different sense from the way it was described in the press? I was not quite sure what you meant.

MR. PERRY: I am afraid I was just shocked by some of the first interpretations that the press were putting on this.

THE CHAIRMAN: I see.

MR. PERRY: They were talking about manufacturers' tax, cigarettes, liquor, radios, T.V's -- a whole list of federal indirect taxes.

I talked to people in Ottawa afterwards, and certainly their feeling was that what they had

understood this to mean mainly was retail sales tax.

THE CHAIRMAN: I do not know. What about that, Don? I suppose the qualification comes later. If you carry the principle of access as it is prescribed there, to its full logical extent, one thing that is explicitly excepted is the customs duty, the external tariff. A lot of discussion took place about the prospect of inter-provincial barriers. Is that referred to later?

MR. STEVENSON: No, not really.

THE CHAIRMAN: Well, yes:

"... to avoid the erection of 'tax

'barriers' to inter-provincial trade ..."

which is the only place in which, by implication, these other things are picked up.

MR. PERRY: Anyway, what I should be saying was that there seemed to be a variety of interpretations being given in the press.

THE CHAIRMAN: Yes.

MR. PERRY: Of what this really meant.

DEAN LEDERMAN: If it just means the consumer taxes, retail sales tax, it is just the difference between an inefficient and an efficient method of collection.

THE CHAIRMAN: Yes.

MR. STEVENSON: This may be the short-run result, but I think there was a very strong feeling in both our government and Quebec's, that the principle should not formally be limited to exclude

everything else except an indirect retail sales tax. Certainly, one can see it now. In Quebec, for instance, they apply their sales tax to production machinery, but not to any goods exported from the province, which is somewhat different from Ontario's situation; in effect, thereby getting away from a problem of which the federal government is afraid in the taxation at the manufacturers' level.

PROFESSOR BRADY: Mr. Chairman, the three objectives are expressed in rather lean language, as indeed the discussion just now illustrates, and their meaning is not too obvious, that is, their meaning in actual practice. Did the draftsmen of this communique shrink from any attempt to give illustrative material because they could not agree upon what it was?

THE CHAIRMAN: I think they congratulated themselves on having survived this much.

MR. STEVENSON: I might say the communique was first drafted by the inter-governmental secretariat, which is a departure in federal-provincial conference terms, over the lunch hour in the last day, and that it almost did not survive an assault on it by the civil servants.

THE CHAIRMAN: As a matter of fact, it might be interesting to know we were given this thing, and six pages it was. The civil servants spent over two hours and only got towards the bottom of page 2, at which point we concluded we might as

well give up and leave it to the politicians, who would probably go through it rather more quickly, which is in fact what happened.

MR. PERRY: Two and (iii) do not have the implications of (i). Practically all the problems of federal-provincial taxation are wrapped up in (i), I would say.

THE CHAIRMAN: Don, do you want to move on?

MR. STEVENSON: There originally were one or two other objectives, but I think they found themselves covered by the following two paragraphs:

" It was recognized that the principle
"of general access to all tax fields would
"not enable all provincial governments
"equally to discharge their constitutional
"responsibilities, and therefore Parliament
"should have the explicit power to make
"equalization grants to provincial
"governments. One province --- "

That, again, is B.C.:

"--- advocated that, instead of
"equalization grants to governments, there
"be established a basic income for all
"Canadians."

The reason for that paragraph is that some of the Atlantic provinces, in particular, feel that the principle of access really gives them nothing. For them, of course, equalization is the big thing in federal-provincial financial

relations.

" While some differences of views
 "were expressed the First Ministers agreed
 "that the Continuing Committee of federal
 "and provincial officials be instructed to
 "consider further how these principles, if
 "formally accepted, might be applied in a
 "revised constitution and, in particular,
 "to consider the alternative method of
 "their application to the taxation of
 "estates, transactions and real property.
 "Certain provinces expressed the view that
 "death duties and real property taxes should
 "be excepted from the principle of access."

You may remember the Quebec propositions
 which had originally said: "We agree to the
 principle of access, except that the provinces
 should not have the right to levy customs duty
 and the federal government should not have the right
 to levy death duties nor property taxes". The
 Quebec position was supported by a paper which made
 the argument that the application of the federal
 estate tax in Quebec went directly counter to some
 of the basic principles of Quebec civil law. There
 is a paper that I think we might distribute to
 at least the constitutional lawyers in the group,
 by Marcel Faribault. It was certainly a very
 powerful argument which Rendall Dick said he could
 not quarrel with frankly because he did not feel

he was that much of an expert on civil law. Did you read it?

MR. CALLAGHAN: No, I did not.

THE CHAIRMAN: I thought you were going to say, "on Marcel Faribault".

MR. CALLAGHAN: I mean, I cannot quarrel with it.

MR. STEVENSON: One point was made by Ontario, that if one is to proclaim the principle of free access, then you cannot really argue. The federal government then went on to argue that just because of the principle of access, it should continue to have the power to levy property tax. I think the point immediately came up that if it immediately made an exception in the case of customs duty, then, following the same kind of argument, there was no real reason to exclude it from property tax if the federal government said it had no intention at any time of levying one.

However, there was a distinction made here, that there could very well be federal taxes on property. Even a capital gains tax, any tax on wealth could involve tax on property, and it might not be in the form of the municipal property taxes we now know.

However, Quebec and one or two of the other premiers said they wanted to make sure that the higher levels of government would not interfere with the municipalities' right to levy property tax:

" The Conference recognized that the
 "discussions on the use by Parliament and
 "the legislatures of their taxing powers
 "should proceed concurrently with the
 "constitutional discussions, and that such
 "discussions would be of continuing
 "importance in relation to the discharge by
 "governments of their constitutional
 "responsibilities."

I think that is "bureaucratese" for something that was originally proposed to make sure that this system of access did not work to the detriment of the taxpayer; that the tax structure and tax-sharing discussions would continue; that the principle of access did not mean that we suddenly forget about the relative occupancy of the two levels of government in the different fields, and that there would have to be continuing discussions both on occupancy and on the basic tax structure reforms resulting from the federal-provincial White Papers.

THE CHAIRMAN: We had suggested, as Don said, a very simple point in very simple language there, and this was the bureaucratic rendering of it. At that point in the discussion in the meeting of the officials, I thought it was no longer decent to keep fighting everything quite so hard as we had, so we dropped that, and that is how it remains.

MR. STEVENSON: I thought it might be

interesting, though, Mr. Chairman, if we did get, as I think we already have some, an expression around the table on the point as to whether these limitations and objectives that we have been discussing should actually become constitutional amendments, or whether they essentially should be left to the inter-governmental consultation machinery and, if so, to what extent does this involve some kind of decision-making authority?

THE CHAIRMAN: Let us take a five minute recess and have our coffee.

--- Short recess.

THE CHAIRMAN: Could we resume, please. Don, would you like to carry on?

MR. STEVENSON: Just before we broke off, I suggested there might be a little more discussion on the point we were talking about before, as to whether or not there should be at this point an attempt to draft constitutional amendments to take care of these limitations to the principle of unlimited access to tax fields; or whether this is something which should be left to the process of inter-governmental consultation machinery and perhaps only as a last resort written into the constitution.

Presumably you have to have one constitutional amendment first, which is to Section 92, to give the provinces rights into the indirect tax field, with the exception of customs duties; but do you

then at the same time amend Section 121 or add new sections concerning what other limitations there should be to the principle of free access?

PROFESSOR BRADY: Mr. Trudeau did comment the other day in the House on this matter when he was asked whether an amendment might be proposed and effected with respect to this matter of taxation, and he said: "No, we must not start amending the constitution by bits and pieces in this fashion". In other words: "Let us get on with the task of mapping out what the constitution should be, and then put it all into one package". At least that is his point of view. Whether it is a point of view that may be challenged (I suspect it can be) at any rate that appears to be his point of view.

MR. STEVENSON: Exactly, and perhaps I might rephrase the question a little bit, because certainly the federal government has said very clearly that its agreement in this whole package is dependent upon the agreement upon the distribution of legislative powers. Therefore, I do not think there is an immediate constitutional amendment contemplated.

However, the question then comes that if one is considering a whole series of amendments at the end of this current process, does one then consider amendments spelling out limitations to the principle of access?

PROFESSOR FOX: It depends, does it not,

Mr. Chairman, on your sense of style of a constitution. Intuitively I would react in favour of not having anything written in, because it is apt to be inhibiting at some later date. One can see that in what is written into the constitution now, that there are problems which would not have existed if things had not been written. However, I think that is purely a subjective reaction. I imagine you can make out a case on either ground.

PROFESSOR MEISEL: Except that there is a sort of long-term pattern discernible, I think, in the crisis that Canada faces in these matters, not only in the narrow sense here, but also in relation to the French-English problems: that is, that it seems to me that in the short-run there is going to be a very vigorous attempt for greater provincial powers in this and other matters -- a demand which will have to be acceded to by the federal government.

Later, as new mechanisms for coordination and cooperation develop, I think it is likely that there will be a drift back towards a great degree of centralization; and that in a federal country like this probably you go through phases or cycles of decentralization followed by periods of greater centralization; and that the constitution should not prevent the free shift back and forth. I think this is the only way a complex country can function, and therefore I think it is highly desirable to put as little as you can get away

with in the constitution and leave the greatest area open to ad hoc arrangements over a period of time.

The problem with it, in part I think, is not so much Ontario but Quebec. Quebec will want to have a great many of these things very explicitly guaranteed, so that they will be pressing no doubt very hard for it.

MR. STEVENSON: Of course, in this case, writing in the limitations would be a limitation on provincial powers.

PROFESSOR McWHINNEY: Right, that is the other side of the coin, John.

DEAN LEDERMAN: I would agree with what John has been saying; at least I think I am agreeing when I expand it in this way. A change as complex as this has to be accomplished on all the fronts upon which change is able to be dealt with. It is not either ad hoc inter-government agreement or constitutional amendment; it is an appropriate blending of both.

As far as the constitution is concerned, I think the sense of style that Paul refers to, as far as it affects me, goes to the level of the generality of the terms, to the level of abstraction. You do not get too particular and you express the additional taxing powers for the province in very general terms; you express limitations in very general terms. If you are going to express the power at X level of abstraction, you have to express

the limitation at the same level of abstraction, and keep it pretty general; then you will leave elbow room for your inter-governmental agreements, or institutions of interpretation (whatever they are) and so on, and have a good deal of "ad hoc-ery" which I agree is essential. We have to advance on all these fronts, and it is not "either/or"; it is six different methods properly blended.

PROFESSOR McWHINNEY: Mr. Chairman, I would add, I think, to Don's point, that you have to recognise which client you are representing; and since the effect of this agreement is to establish something the provinces did not have before, sensibly the provinces do not lead off with limitations on the new competence. That is for the federal government to raise if it wants to.

Actually, I suspect, drawing on experience from a study of other federal systems, that there are very substantial political limitations to the con- exercise of current tax powers. One sees it, by the way, even in the Canadian sense. If you remember Duff Roblin's experiment in Manitoba in the tax area and you look at the other federal systems, even when you get a situation of concurrent income tax power, there is a very definite system of political limitations on provinces and the federal government competing with each other in this area. It seems to me that it is not really for the provinces to lead off with limitations on a new competence, in effect, that this agreement gives them. I am quite sure

the federal representatives will raise it if they regard it as necessary to limit what in effect they are now giving away.

DEAN LEDERMAN: You cannot have bargaining in inter-governmental agreements without some initial definition of bargaining power and position of the parties, and that has to come from the constitution, but only in very general terms.

MR. STEVENSON: Professor Lederman, do you think the (i) and (ii) on page 2 are more or less general in the sense of what you are thinking of as general expression of limitation?

DEAN LEDERMAN: Page 2?

MR. STEVENSON: The two clauses we were talking about earlier, (i) and (ii).

PROFESSOR McWHINNEY: What does that mean, by the way, Don? Is that just a re-statement of the law as it now stands, because that is the law.

MR. STEVENSON: Perhaps (ii) is the law but I do not think (i) is the law.

PROFESSOR McWHINNEY: (ii) certainly is the case law.

MR. PERRY: The more I look at (i) the more it seems to me to be an entirely new principle.

PROFESSOR McWHINNEY: (ii) certainly is a statement of the existing constitution plus case law, and I have not any doubt that (ii) would remain. It is the law.

MR. PERRY: The latter part of (i) seems to

imply that this is the result of the present "within the province" limitation, whereas in fact it is not. The real change of substance there, the real question of substance is whether you enact that sort of limitation by the constitution.

DEAN LEDERMAN: The word "property" is going begging, because income becomes property, purchases become property.

PROFESSOR McWHINNEY: The real point is the one though at the bottom of page 1. I do not even think the Roman small (i) is such a big innovation. Your big innovation surely is this Arabic l at the bottom of page 1 and top of page 2. That is the huge break-through. I thought the point Don was raising was whether limitations on this under principles of federal comity should be established. My point was it did not seem to me it was a matter for Ontario to lead off with the case for limitations, since clearly only the federal government has the interest in establishing limitations and it is bound to bring them in itself in the next round of negotiations, whenever that is reached on this.

DEAN LEDERMAN: I suppose what I really mean (and I reserve the right to change my mind about this) speaking off the cuff: you express the taxing powers generally, and then the power of direct or indirect taxation generally; then say: "As far as the provinces are concerned, these powers are not to be used so as to cause double taxation of

citizens of Canada, or so as to cause tariff barriers directly or indirectly within Canada" and let it go at that and leave it to inter-governmental agreement.

PROFESSOR McWHINNEY: Could I ask: you would agree that the second part of your point is covered by 121 anyway; and the first part, probably even without a taxation provision, might well be litigated on other more general constitutional provisions. The double taxation, particularly with punitive aspects, it would seem to me, would raise civil liberty issues and might be interesting to litigate on that point alone.

DEAN LEDERMAN: Today the province where the share register is can tax, and if the beneficiaries are in another province they are taxed again by the other province.

MR. CALLAGHAN: Triple taxing on shares; tax where the shares are too.

DEAN LEDERMAN: Yes, exactly.

PROFESSOR McWHINNEY: We have avoided that so far, Bill, by the informal agreement.

DEAN LEDERMAN: Insofar as the province accepts only the federal estate tax system, yes, but not otherwise.

PROFESSOR FOX: Mr. Chairman, it is implied here that somehow it is reprehensible to have two provinces taxing the same source. Why is that any more reprehensible than having one province

and the federal government taxing one source?

This in point (i) here applies to the final phrase "by more than one province". Why not: "by more than one province or by a province and the federal government"?

PROFESSOR McWHINNEY: It means ceiling, does it not, taxing the ceiling capacity, or near-ceiling capacity.

THE CHAIRMAN: If you are looking at the taxpayer's point of view ---

PROFESSOR FOX: Yes, exactly. From the point of view of the citizen, what does it matter if he is taxed by B.C. and Ontario, or Ontario and the federal government? What is the principle at issue here? Is it administrative convenience; is it access; is it the citizen's right to avoid double taxation? We have discussed all these things thus far this morning.

DEAN LEDERMAN: The federal government should be under the same prohibition, that they cannot simply design their tax system so as to fragment the country, so as to erect inter-provincial tax barriers.

PROFESSOR McWHINNEY: Paul has a different thought. I read (i) perhaps thinking in terms of other federal systems than Canada. I thought (i) was really limited to the situation -- obviously double taxation does exist. My income is taxed in Quebec by Quebec and, of course, by the federal

government. Double taxation is a commonplace, but surely what is involved here is the principle of what is called "punitive" taxing, ceiling tax competition by two sources with the consequent constitutional problem of priority. I assume, to make sense, (1) must mean this. No economist today is arguing that double taxation as such is objectionable. You are arguing about the undignified race for the taxpayer's dollar and lack of cooperation.

MR. PERRY: No economist even knows what the difference is between direct and indirect taxes.

PROFESSOR McWHINNEY: Even John Stuart Mill was not sure, was he. I mean, surely (1) is subject to the whole truth it is trying to convey which is something like this. There has to be an attempt to avoid ceiling or punitive type of taxation and an undignified race, if you wish, of two or three ---

PROFESSOR FOX: But you can have punitive taxation occurring, in your terms, in the race between the federal government and one province.

PROFESSOR McWHINNEY: I agree.

PROFESSOR FOX: What you are really discussing then is the evils of multiple taxation.

PROFESSOR McWHINNEY: No, not multiple in terms of authority. We are surely discussing the evils of excessive taxation -- a "point of no return" tax.

PROFESSOR FOX: My point is that excessive tax can arise from a source other than taxation by

more than one province.

PROFESSOR McWHINNEY: Or even by a single authority.

PROFESSOR FOX: That is right.

PROFESSOR McWHINNEY: This is the point in the Australian income tax case, you remember, which was very crucial to the High Court decision. I suppose it might be helpful to spell out at some future stage, following Don and Harvey and Paul, that per se, apart from the inconvenience it brings to auditors and accountants and others, double or triple taxation is not necessarily objectionable.

DEAN LEDERMAN: But the evil of excessive taxation ---

PROFESSOR McWHINNEY: Excessive taxation.

DEAN LEDERMAN: And the danger of it in a country with eleven senior taxing authorities, is greater than the country with one senior taxing authority.

There is another point, too, that none of the taxing authorities should be allowed so to design their tax system that in the total context of taxing in the country it fragments the country economically.

PROFESSOR McWHINNEY: That could be reached, I think, even now, by constitutional amendment.

DEAN LEDERMAN: If the Supreme Court became sophisticated about 121. I doubt ----

PROFESSOR McWHINNEY: Even 91(2) on federal

comity principles. I think what we are reaching for here is that the complexity of the federal form should be, so far as can be, minimized as far as it contributes to excessive or "punitive" taxation. I suppose the corollary to that is the affirmative proposition, and I think perhaps it ought to be made: that per se certainly lawyers do not object to double taxation or even triple taxation. One only objects to the administrative complication and the fact that it may escalate very quickly to ceiling punitive taxation.

PROFESSOR BRADY: I make a caveat here that surely it is not merely the number of dollars that you take from the taxpayer. You have got to consider the inconvenience, as it were, of being taxed by a number of authorities. There is an inconvenience.

PROFESSOR McWHINNEY: Yes, but it is slight. In Quebec, as opposed to Ontario, I fill in two income tax returns, whereas you fill in one. It is a nuisance.

PROFESSOR BRADY: You wipe off then this, what you call, nuisance as a factor of not much importance?

PROFESSOR McWHINNEY: I was thinking in the Australian context. You remember when Victoria claimed the right to income tax, and the courts said: "Look, you are going to get 108 per cent of the taxpayers' income tax, and we will have to decide

who collects first and so on". I think that is really your danger, of lack of coordination of two authorities reaching the same field in excessive demands.

PROFESSOR BRADY: I think that is an evil.

MR. PERRY: There are really two things. One is the effect of excessive rates, and the other of variety of bases. We have only skimmed the possibilities on the estate taxation. It may be based on the place of the testator, the place of the beneficiary, the situs of the property, the place where the property can be transferred. You can introduce residence as a concept for all of these, and you can probably work a situation where every province in Canada could have some rights for taxing the same estate.

PROFESSOR McWHINNEY: You will agree, Harvey, from your knowledge of the law in this situation, that it is not difficult to arrive at rational principles of the law, unless you accept Bill's point.

MR. PERRY: No, these have been worked out.

PROFESSOR McWHINNEY: They do exist already, and the only key here is whether some authority now existing, such as a federal court of proper jurisdiction, or a new federal-provincial executive institution is competent to establish the rational principles with the power to say, 'These are the principles'.

However, it can work on consensus and an executive consensus through, I would think, a reformed federal-provincial body going beyond the Tax Structure Committee. I think it could work as well there as through a court. I agree with Bill's point that you do need somebody ultimately to have the say, whether it is this mixed federal-provincial body or a court.

DEAN LEDERMAN: Let me ask Harvey a question, because if anybody here knows the answer I think he does.

Would we have ever pulled out of the chaos of the 1930's if it had not been for the pressure of the Great War? Is that not what put the federal government on top and enabled it to get taxation agreements?

MR. PERRY: Yes, I think it was; it created a sort of different intellectual approach to this whole thing. People got used to some rational rules.

DEAN LEDERMAN: And the business community learned the benefit of it.

MR. PERRY: That is right.

DEAN LEDERMAN: They do not want to see it go, and I am 100 per cent on that side.

MR. PERRY: I think, for that matter, most governments have adopted this feeling, too.

MR. STEVENSON: There was no question at the meeting that there was real willingness of all governments to avoid these problems and to agree to

rational rules.

PROFESSOR McWHINNEY: One could add to Alec's principle here. I think, for example, it is clear that the Quebec government, provided the powers issues are properly resolved, certainly seems to me to be getting out of the income tax, the collecting side of the thing, which is clearly a nuisance and annoys taxpayers. It gives them a more direct feeling that the provincial government is taxing them.

In other words, provided you establish on a politically fool-proof basis the principle of sharing of the tax fields, and it is on a fool-proof basis, you can certainly, I think, persuade your provinces and the federal government to agree perhaps on one tax-collecting authority by rational measures.

Certainly this is the Australian experience. It is to everybody's advantage to simplify and rationalize the institutional methods, as long as your area of powers is clear.

I take it this formula takes us into this, the formula that is satisfactory now to the federal government and all the provinces. I am sure that the Quebec government would be happy to get out of this field, but the reason it has not up to date is because it has always had in reserve the possibility of directly competing with the federal government for the taxpayer's dollar.

PROFESSOR BRADY: The trouble is that when you make comparisons with Australia, you are making

comparisons with a state where it is much easier to get agreement really on what is an area of power than in a country like Canada, where it is harder to get agreement on the issues of power, for various reasons (sociological and so on) and Quebec, of course, presents many of these reasons rather forcibly.

PROFESSOR McWHINNEY: Although in the end, in the Australian context, if you remember it was a genuine conflict, and it was only solved by the courts saying: "You, the federal government, have priority". It was a forced agreement in the end.

MR. PERRY: I think everyone in Australia is happy about the arrangement there but for the Commonwealth states.

PROFESSOR McWHINNEY: Their unhappiness is politically useful, and the threat of a court challenge with new socio-economic facts sort of persuades the federal government to be kindlier from time to time. You balance the inconvenience of trying to litigate again, against the fact you get your money and you are getting a little bit more.

THE CHAIRMAN: I would suggest we might try to move along on this subject, because we must deal with the Atkey paper, which becomes more controversial every day. I am conscious that John Conway delayed an overseas trip to have the opportunity to be with us today. I think, with your permission, I would like perhaps to speed through the rest of this, Don.

MR. STEVENSON: I might just make one comment just finishing up the taxing power. I do not know whether any of you have had an opportunity to read the Ontario paper entitled "Inter-governmental Finance and Ontario's White Paper on Provincial and Municipal Taxation." There are copies of it here. This was not a direct reply to the federal paper at all. It was in answer to a request at the civil service meetings that Ontario do prepare a paper which would tie in, in an operational and functional sense, what the Ontario White Paper meant last March in terms of federal-provincial finance and possible constitutional arrangements. It is prefaced by the statement:

"This is, in essence, a case study of

"how the principle of access might work"

and then goes on to suggest stronger forms of inter-governmental coordination and collection of taxes. We would certainly appreciate any comments from any of you on this paper, if you have a chance to read it over the noon hour.

If we could go on to Agenda Item 1(b), there was more discussion really on the spending power than on the taxing power; because I think most premiers and prime ministers feel much closer to the spending power issue, the taxing power problem being one a little more for the financial experts. Perhaps I might just read quickly the communique on that:

" The second major item of

"discussion concerned the exercise of
 "the spending power of the Parliament of
 "Canada. Most delegations agreed that
 "the present power of Parliament to make
 "payments to individuals or to institutions
 "should not be subjected to any
 "constitutional limitation; one province,
 "however --- "

and this was Quebec ---

"-- reserved its position until the
 "question of the distribution of powers
 "had been dealt with, while some other
 "provinces --- "

and this included Ontario ---

"-- expressed the view that this federal
 "power should in practice be exercised
 "in consultation with the provinces. It
 "was also noted that some differentiation
 "of institutions might be required before
 "this principle could be finally accepted."

Ontario in its paper raised, as an example,
 the question of the 1966 about-face on adult
 training, whereby the device of the federal spending
 power to make payments directly to individuals and
 to institutions was used, and the federal government
 effectively enforced an interpretation of the
 constitution that education applied insofar as
 education took place in an educational institution,
 and that industrial training was not education, by

by-passing the provinces and making payments directly to workers and to companies providing industrial training.

The Ontario paper really made the position that there should be consultation before direct federal use of this power in any area that could be considered provincial; secondly, that the federal government should not use this as a device to get around the problems of initiating a shared-cost program or having discussions over a constitutional amendment.

Mr. Robarts, for instance, raised the problem that with no limitation in this area, actually permitting the federal government to make payments directly to municipalities, he was concerned that perhaps one should write in some kind of limitation here defining what the institution should be, perhaps leaving out such bodies as municipalities:

" There was general agreement that
 "there should be no constitutional restriction
 "on the power of the Parliament of Canada
 "to make unconditional grants to provincial
 "governments one province, however, expressed
 "the view that the establishment of a negative
 "income tax plan, administered by the
 "Government of Canada, would make such
 "payments unnecessary".

That, of course, was B.C.

PROFESSOR McWHINNEY: Don, what is your own

definition of the negative income tax plan?

MR. STEVENSON: I think the way Mr. Bennett uses it, he uses guaranteed income plan and negative income tax plan as almost inter-changeable.

THE CHAIRMAN: Yes.

MR. STEVENSON: Whereby the two essentially have the same aim.

THE CHAIRMAN: I guess, in fact, the negative income tax is the means of achieving the end of the guaranteed income as he uses it.

MR. STEVENSON: Yes, although negative income tax normally involves the principle where as you get close to the guaranteed minimum you may have a sliding scale; because you have a 50 per cent credit applied if your income is below, say, \$3,000 for a single person, \$4,000 ---

PROFESSOR McWHINNEY: Can I ask you, Mr. Chairman, if this is considered, apart from its immediate political context, a sophisticated proposal, economically?

MR. STEVENSON: I think most of the rest of the people considered it irrelevant to this discussion, but something that should very well be discussed and is obviously ---

PROFESSOR McWHINNEY: Is it economically sophisticated today?

MR. STEVENSON: I think so.

MR. PERRY: Economically?

DEAN LEDERMAN: Sophisticated, or

respectable, you mean?

PROFESSOR McWHINNEY: The same thing.

MR. PERRY: Something after talking about priorities, I guess.

PROFESSOR McWHINNEY: Is it something Bennett dug up himself, or some bright people?

MR. PERRY: No, there have been whole books written on negative income tax.

PROFESSOR McWHINNEY: But the context in which he has presented it.

MR. STEVENSON: What he is saying is that you should not have equalization payments to governments; in essence, you should try to equalize them on people, and if you establish some kind of guaranteed income for individuals across the country, this is the way you should deal with the problem of regional disparities.

PROFESSOR McWHINNEY: You use your income tax to achieve equalization, in fact.

MR. STEVENSON: Right.

PROFESSOR McWHINNEY: But is that not a sophisticated use of the national income tax policy?

MR. STEVENSON: Yes, it could be.

THE CHAIRMAN: His whole basis is to assist individuals rather than governments. He distinguishes between equalization payments as between governments, and redistribution of income as between individuals.

The point that is missing, however, which is

pointed out in this discussion, is that governments are not some abstract concept but rather they render services which accrue to the people that they serve.

This is an interesting point, and I suppose it is rather in the category of what "Rab" Butler once said of Anthony Eden: "He is the best prime minister we have". Well, this is the best proposal we have had on this, and it is the only one.

PROFESSOR McWHINNEY: From British Columbia.

MR. PERRY: He founded this practice himself. Instead of the Ontario property tax rebate, he sent out cheques to people, taxpayers.

THE CHAIRMAN: Yes.

PROFESSOR BRADY: It is a sophisticated form of social credit, perhaps.

PROFESSOR McWHINNEY: I wonder if it is Gilbert Kennedy or some contemporary of yours from University College, who thought this up.

MR. STEVENSON: "It was generally agreed
"that the Parliament of Canada should continue
"to have the power to make conditional
"grants to provincial governments,
"provided there is a satisfactory formula
"for determining a national consensus in
"favour of particular programmes, and
"provided there is a satisfactory formula
"for compensation in non-participating
"provinces.

" With respect to the formula for
"determining the consensus there was
"agreement that the Parliament of Canada
"and the provincial legislatures would
"be the appropriate bodies to determine
"whether a consensus exists, and there was
"general agreement that the formula should
"reflect the regional character of the
"country. However, one province stated
"that while it agreed with the principle of
"establishing a consensus, it considered
"that the formula for amending the
"constitution might well provide the basis
"for reaching consensus. It was further
"agreed that the Continuing Committee of
"Officials should look again at alternative
"formulae."

MR. PERRY: Is that B.C. again?

MR. STEVENSON: No. I am not sure who
the "one" referred to. There were two or three
provinces that suggested that if we can arrive at
a means of establishing a national consensus here,
then this should be a means that should be used
whenever the question arises -- be it amendment
formula, be it other aspects of our constitution.

I think it did not relate to Ontario.

Mr. Robarts did make the point that, in keeping with
the last discussion of the Advisory Committee here,
bringing in the Senate, senatorial districts, and so

on, presented a pretty complicated kind of formula, drew in a few red herrings across the path, and that something more along the lines that had been discussed at the time of the Fulton-Favreau discussion would be more appropriate.

PROFESSOR BRADY: Recognizing a population factor.

MR. STEVENSON: Yes, and what was in the Ontario paper was seven provinces with 60 per cent of the population.

DEAN LEDERMAN: This is what we urged upon you at our last meeting.

MR. STEVENSON: Exactly and, thanks to you, that went into our paper and was presented at the meeting. It did achieve certainly support from a number of provinces.

THE CHAIRMAN: As I recall, it was Manitoba really that suggested using the formula for amending the constitution as a basis for consensus.

MR. STEVENSON: That is right:

"There was general agreement that
"there should be no fiscal penalty upon the
"people of the non-participating provinces
"and that the ways of achieving this would
"be discussed at future meetings."

Personally, I think that sentence rather slipped by Mr. Robarts. Federal people interpreted that sentence, I think, as committing the conference to the principle of payments back to people, but

there is no question from the discussion at the meeting that there was no agreement on that principle.

THE CHAIRMAN: Well, the Ontario Treasurer certainly addressed himself rather strongly to that, in opposition to that proposal.

MR. STEVENSON: And a number of the provinces made it quite clear that they did not like at all the federal proposal with regard to direct payments to people, although, surprisingly, two or three provinces said they thought this was more appropriate than payments to provincial governments.

Then, of course, Ontario in its paper had alternative approaches: either provide the fiscal equivalent, or at least 90 per cent of it to the provincial governments of non-participating provinces, or do not collect the tax to provide the federal share in the province that does not participate.

THE CHAIRMAN: I believe the most vigorous opposition to the proposal of remission of payments directly to individuals came from New Brunswick, did it not? It seems to me Premier Robichaud was very emphatic on that.

MR. STEVENSON: Very strong. The federal people have really slid over this whole question of the administrative difficulties. They have made this a pretty strong point.

THE CHAIRMAN: The one point that did come out on this, you recall the federal defence against

our proposition on this was that our proposition would involve differential federal taxation in different parts of the country.

PROFESSOR McWHINNEY: This was Ontario's contention?

MR. STEVENSON: Yes, that you do not raise taxes for the federal share.

PROFESSOR McWHINNEY: And you adopted this in principle, eh?

THE CHAIRMAN: Well, we had proposed in our paper that rather than levying taxes on those provinces who did not participate in a shared programme, and then sending them anything back to people in turn -- a double administration, that our proposal was simply not to levy in those provinces in the first place, which would involve a differential taxation in the different provinces.

PROFESSOR McWHINNEY: Except the province itself, presumably, would be taxing them in some other area, would it not?

THE CHAIRMAN: Presumably, yes. The federal officials originally objected to that on the ground that they could never tolerate differential taxation in the provinces.

However, shortly thereafter Mr. Benson came out with a budget in which regional differentiation of fiscal policy was a principal point, and the Ontario people pointed this out at the meeting.

PROFESSOR McWHINNEY: I understand the objection to differential taxation in the abstract, but presumably if Ontario showed that in the concrete the fact of not participating in this federal plan, it was itself imposing tax in this area up to a certain level: I cannot see that there is any differentiation there.

In other words, it would seem to me that if the federal government and provinces could agree that the total tax would be up to a certain level, there is no differentiation. It does not matter whether federal or provinces collect or administer.

MR. STEVENSON: This comes directly from the federal position on opting out, which has changed completely, of course, in the last five years.

PROFESSOR McWHINNEY: Yes.

MR. STEVENSON: And they now do not accept as a good principle what did happen with Quebec four or five years ago, and they do not want this situation to happen again.

PROFESSOR McWHINNEY: But they cannot really then use the term "differentiation" or "inequality", because it is a purely abstract conceptualization of the problem if concretely it comes out at the same thing.

MR. STEVENSON: They would argue very strongly that even though Quebec taxes the exact same number of points that the federal government

gave up, to cover hospital insurance, Canada Assistance Plan, and the continuing health plan, even though the net effect is the same in Ontario and Quebec, that this is bad, differential federal taxation.

PROFESSOR McWHINNEY: I think they should be contested on the assertion of differential taxation. Whether this is bad or not presumably turns on the political judgment of the immediacy of your contact with the population, but I do not think it is examined in a concrete sense against a concrete economic record. They should be contested on that, and they should use their terms properly.

MR. STEVENSON: It is an emotional connection with special status that they are concerned with.

PROFESSOR McWHINNEY: But it is unsound in its reasoning. It has a hidden value judgment which goes to quite different matters than the tax element, I think.

I think you could argue in a very sophisticated way, Don, that a pluralistic federal system might have this opting-out, the non-participation and that from the viewpoint of national economic policy, as long as in the totality in the province and federal tax you are getting the same figures throughout, there is an administrative inconvenience perhaps but no

objection in terms of overall national economic policy. I think the province should contend with that position.

MR. STEVENSON: That ended the communique on the point of the spending power.

On regional disparities, there was a short discussion, but it did result in agreement that there should be written into the preamble of a revised constitution the objective of reducing disparities across the country.

The federal government did produce a paper (have we a copy of it here, Ed?); they had a statement in their paper that, I think, was accepted as a kind of statement that might go into a preamble. It is pretty general. Here it is in the communique:

"Some provinces argued further that the
 "constitution should impose on the federal
 "government a specific obligation to alleviate
 "disparities. First Ministers agreed that
 "at future discussions on the division of
 "powers, it will be important to ensure
 "that the federal and the provincial
 "governments have appropriate powers to
 "work towards this objective".

It was rather interesting that Nova Scotia has been the one all along that wants to have an equalization formula written right into the constitution, and very firm guarantees that there will be equalization payments and action towards the

elimination of regional disparity.

PROFESSOR McWHINNEY: Is that all they want written in? I mean, that is relatively harmless and precedents exist in other federal systems.

MR. STEVENSON: You have here the Premier of New Brunswick, who objects violently to this by saying that, "You are just getting yourself into a strait jacket by trying to write an equalization formula into the constitution."

PROFESSOR McWHINNEY: Well, under the first part it is contract, the principle of payments, but the next part is simply a vague philosophical affirmation. If that is all they want, it is not terribly startling.

MR. STEVENSON: Nova Scotia wants something quite specific.

PROFESSOR McWHINNEY: But the second part, as you mentioned, Don, is not entirely specific; it is more a philosophic principle. Equalization payments are specific, particularly if you enumerate amounts or provide machinery for establishing amounts.

MR. PERRY: I suppose we are just talking about economic disparities here and not social, cultural, geographic, whatever.

MR. STEVENSON: Basically.

PROFESSOR BRADY: The Maritime front is divided on this, then.

MR. STEVENSON: The Maritime front is divided on this question.

PROFESSOR McWHINNEY: Why?

MR. STEVENSON: I think there is pretty well a consensus that one does not want to get too specific in the written constitution, but this has been a very consistent point of Nova Scotia over the past three or four years, arising from the fact that Nova Scotia felt very unhappy about the last equalization formula, for technical reasons that I do not think most of the rest of the provinces felt were all that valid.

PROFESSOR McWHINNEY: I would think it is one of the things in comparative federal constitutional terms, where a federal constitution sensibly could be reasonably specific. If all that is wanted is what you suggest Nova Scotia wants, I think it is quite harmless, and there are precedents for it in federal experience in other countries.

PROFESSOR MEISEL: Mr. Robichaud probably thinks an astute politician can get better terms by manouvering, which the strait jacket would not permit him to do.

THE CHAIRMAN: Yes, I think so.

PROFESSOR McWHINNEY: I gather from talking to one of his officials, that he is taking more of a federal line than other people.

PROFESSOR BRADY: Well, he is a liberal premier.

PROFESSOR MEISEL: That has something to do with it.

PROFESSOR McWHINNEY: He is pretty Ottawa-oriented, though, in comparison to other liberal premiers.

MR. STEVENSON: On the question of regional disparity, it was rather interesting that the ministerial meeting the day before this started, as Ian has said, shied away very much from general principles, the constitutional provisions, and stuck almost entirely on the programme of the Department of Regional and Economic Expansion, particularly the new incentive programme.

I think one sensed as a result of that discussion and in private conversations, that a good bit of the heat of the Atlantic provinces' pressure on the question of regional disparity has been evaporated as the result of the federal action. They are really quite happy with Mr. Marchand's proposals, and it may be that we have a real de-escalation of the Atlantic province pressure, where they were saying: "We will not even bother with linguistic and constitutional discussions unless we are assured that there is equal prominence given to the problem of regional disparity". They have been bought off.

THE CHAIRMAN: Their concern, as you say, for the constitutional aspects varies inversely with the imminence of more money.

MR. PERRY: If someone would just get the heavy water plant going for them, they would really be happy -- and get Clairtone off their hands.

THE CHAIRMAN: I think there has been quite a bit of heavy water in the subject, but it is not the kind that we seek.

MR. STEVENSON: Mr. Chairman, maybe Ed could deal with the Committees of Ministers.

THE CHAIRMAN: We will give you thirty seconds, Ed, that will be all you need.

MR. GREATHED: Perhaps it will be, Mr. Chairman. I just noticed on Agenda Item 3, that the communique left out a report on regional disparities which was submitted at the last minute because the committee had only met the day before.

PROFESSOR McWHINNEY: That is the fifth committee, regional disparities?

MR. GREATHED: That is correct. There are five. I think, just to give some background to these ministerial meetings very briefly, first of all when they met in the last week of May, I think they met under certain conditions: one, that their terms of reference were rather vague as given to them by the prime ministers last February; secondly, that they were, after all, first meetings, and that ministers had not met in this form on this subject before.

I think the third point is that some of the ministers were very new to the constitutional

talks, the ministers who were appointed by their various governments to these committees.

There was also the fact that they were under some pressure to produce some kind of report for the prime ministerial meeting of last week.

Given these things, I think we were very happy that the issues that are listed under Item 3 were being discussed at the political level by ministers, and perhaps in a little more detail than they have been discussed before.

I might just comment very briefly, Mr. Chairman, on the specific meetings, that on the Senate I think it was quite clear that virtually all governments have submitted propositions on this subject; that these propositions have been discussed among the officials, and that there was a general consensus that changes should be made to the Senate, but the details of what kinds of changes and so on were not spelled out in very much detail.

I think, therefore, that when the ministers met on the Senate it was really expected that the federal government would take the proposals from the point the officials had reached, and either elaborate on their own positions on the Senate and react to the provincial ones, perhaps, or even perhaps present the meeting with a detailed and formal proposal on the Senate.

As it turned out, they did none of these things, and as a result it was a rather frustrating

day, and some ministers expressed the feeling that they had rather wasted their time at this particular meeting; but I think the consensus was that when we came back to the second meeting which was likely to take place on each of these subjects in the fall, that all governments would be prepared to go into a good deal more detail on the Senate.

Turning to the subject of official languages, I think here we ran into a little different situation, where you have the federal government in effect urging the provinces, firstly, to come up with specific financial proposals referring to language programmes that they were developing; secondly, to take some steps to explore the problems of writing a guarantee into the constitution on the language question.

I think the reaction of many of the provinces was cool to both these points, first because the Official Languages Bill was being debated at that time in the House. Had Mr. Turner introduced the amendments at that point, Charles?

MR. BEER: Yes.

MR. GREATHED: We did have the amendments at that point?

MR. BEER: Yes.

MR. GREATHED: But I think some of the provincial reaction was reflected in the parliamentary discussion and some of the difficulties that went on during that debate.

Our own chief representative on this committee, Mr. Davis, did give some details of the Ontario proposal. It remains to be polished and given a little more concrete form, but there will be a detailed financial proposal from the Ontario government, probably in the next few months.

I might add that some of you may have seen the story in the Montreal Star May 30th, which suggested an enormous figure that Ontario had mentioned, something in the nature of \$250 million. I think it was. Dr. Brady, you mentioned it to me and we saw the report. Mr. Davis mentioned no figure of that kind at all, nor did he respond in that meeting in the manner that the Montreal Star reporter surmised.

Incidentally, the Montreal Star had a story the following day which completely contradicted the report that was given headlines on May 30th.

I think what is going to happen in that particular committee is that they will go on, in their second week in the fall, to look in a little more detail at the whole question of perhaps a revised constitutional guarantee on the language question. Certainly this was Ontario's point of view, that the committee should keep an open mind on the subject and should be prepared to discuss it and not to just dismiss it out of hand.

I do think that meeting was very much coloured by the debate that was taking place and

had taken place in Parliament on the Official Languages Bill.

On fundamental rights, although Frank Callaghan can add to what I have to say on this, because he too was at that meeting, I think since I was the one person from Ontario present throughout that week, I did find in appearing at the various meetings that we probably had the best discussion of substance at that particular meeting in contrast with the others.

Again, here it was quite clear that Ottawa considers this to be a very high priority in their programme, and they were urging acceptance of their views.

The provinces, I think, were generally very cool to some of the proposals that Ottawa had put forward. I think, in particular, they are virtually unanimous that the case for entrenching legal rights had not been convincingly presented by Ottawa, and that far more persuasion was going to be necessary on the part of the federal government before there was much acceptance of that particular proposal.

PROFESSOR BRADY: Legal rights?

MR. GREATHED: On legal rights, yes.

DEAN LEDERMAN: That is, as defined in the federal White Paper.

MR. GREATHED: That is correct.

PROFESSOR McWHINNEY: These are, what,

procedural due process, are they?

MR. CALLAGHAN: That is right.

MR. GREATHED: I think the arguments really boil down to two points: one, the impact of entrenchment on the parliamentary system generally, which I do not think many of the provinces feel the federal government has sufficiently taken into account; secondly, I think, really what is the best method of protecting fundamental rights. Here, I think there are still some considerable differences of opinion.

We shall be distributing, in the not too distant future, for those members who have not seen it, a copy of Don Smiley's paper which consisted of his presidential address to the Canadian Political Science Association at York a week or so ago, which is a very interesting assault on the whole concept. Frank was saying to me this morning that I had missed this in the Globe & Mail, and having looked at Smiley's paper he would have some doubts as to his previous position on the whole question of fundamental rights. I gather that Fisher & Crowe also had some article in the Telegram.

MR. CALLAGHAN: An article last night on the Supreme Court of Canada which raised problems of entrenchment of rights -- a different position on the Supreme Court from seeing those papers.

MR. GREATHED: Finally, Mr. Chairman, on the judiciary, I think this was a shorter meeting

than others, and there was fairly quick agreement, I think, that consideration ought to be given to mentioning the Supreme Court of Canada in the constitution, including provision for the appointment and tenure of judges there.

There was less discussion -- and I think we will have to come back to this next time -- on Quebec's proposal for a constitutional court, and several other matters which arose during that particular meeting. On the judiciary, I think people were getting a little tired after a rather long week of meetings, and perhaps did not go into as much detail there as we did on some of the other subjects.

PROFESSOR McWHINNEY: They were different ministers, though, were they not?

MR. GREATHED: No, they were essentially the same ministers.

MR. STEVENSON: On the last two.

MR. GREATHED: On the last two, on fundamental rights and the judiciary.

PROFESSOR McWHINNEY: But not on official languages?

MR. GREATHED: No, on official languages and the Senate they were rather different.

PROFESSOR MEISEL: Who was our man on the Senate?

MR. GREATHED: We had Mr. Yaremko and Mr. Welch. They were the two ministers

representing us on the Senate.

PROFESSOR McWHINNEY: And fundamental rights and judiciary?

MR. GREATHED: On fundamental rights, Mr. Wishart and Mr. Bales. Mr. Bales' estimates were in the House that day and he could not be there. On the judiciary, it is Mr. Wishart and Mr. Lawrence, but Mr. Lawrence was out of the country so Mr. Wishart carried the load for two days on this.

MR. STEVENSON: On official languages, Messrs. Davis and Guindon.

PROFESSOR SYMONS: Mr. Chairman, which Mr. Lawrence?

MR. GREATHED: A.F., Minister of Mines.

PROFESSOR McWHINNEY: Are you saying something on the Senate Committee, too? You said, "to conclude". Are you not going to say anything on the Senate?

MR. GREATHED: No, I just mentioned the Senate at the beginning.

PROFESSOR McWHINNEY: Not very substantial?

MR. GREATHED: No, it was not very productive, I think most people generally agreed.

PROFESSOR McWHINNEY: Why was it not productive? In some ways it was the most imaginative of the federal proposals, mainly, I think, because a different person handled it. Paul Martin was given the ball to carry, and he did a bit of work. I thought their proposals were interesting.

MR. GREATHED: I cannot really answer your question. I think the provinces, because of the previous work which had been done on the Senate, were expecting some initiative from the federal government, and this just was not forthcoming on that particular day.

PROFESSOR McWHINNEY: Although the proposals themselves on five initiatives were the government's.

MR. GREATHED: They did, but the federal government was unwilling, for whatever reason, to elaborate on these proposals.

PROFESSOR BRADY: Was Paul Martin there?

MR. GREATHED: Yes, Otto Lang was chairman of the federal group, and Senator Martin and Eric Kierans were on the committee.

--- Off-the-record discussion.

MR. GREATHED: That was a long thirty seconds, Mr. Chairman.

THE CHAIRMAN: Are there any other comments or discussion in that area? I think it covers it very well.

PROFESSOR SYMONS: Mr. Chairman, just one question. Apart from the discussion that perhaps arose in connection with the third paragraph on page 4, was there any useful and intensive discussion at any point in regard to amendment procedures?

THE CHAIRMAN: No. I recall that once or twice in the discussions, suggestions were forthcoming (including, I believe, both the prime minister

of Ontario and the premier of Quebec) that this matter should not be postponed for ever, and that we must get on with the question of amending formula. I do not think there was an explicit follow-up to that, but the point was registered in the work of the committee.

PROFESSOR SYMONS: Thank you.

MR. PERRY: Was there any subtle distinction between first ministers, Constitutional Conference, prime ministers or premiers, or are they all the same people?

THE CHAIRMAN: No, they are interchangeable.

MR. PERRY: We are not missing anything.

THE CHAIRMAN: No, I do not think there is any subtlety there.

PROFESSOR SYMONS: In the same vein, Mr. Chairman, I note this is entitled "First Working Session".

MR. GREATHED: This was the butt of many jokes.

PROFESSOR SYMONS: Is this a terminological inexactitude?

THE CHAIRMAN: I think the "first working" has to be taken as joint adjectives and not as separate qualifiers.

MR. STEVENSON: Contrary to what appeared in the press, one of the reasons for the meeting was not that civil servants and ministers were speaking freely. I do not think a civil servant

opened his mouth.

THE CHAIRMAN: I think several did, but I do not think anything was said. (Laughter)

DEAN LEDERMAN: They preferred "working" as an alternative to "secret", no doubt, which would have been correct.

THE CHAIRMAN: Well, early in the game there was a proposal that people had in mind, that there might be twenty people around the table -- the Prime Minister and one advisor, and they might have their shirt sleeves rolled up and poring over paper; but in fact, when one sat down around the table, there was the Prime Minister and his Treasurer, Attorney-General or whatever other minister he happened to have with him at the time, and officials behind in the usual way, and the ministers carrying on the discussion.

I think the reason it came out that way, several premiers (including our own) felt very strongly on the question that ministers should talk and civil servants should be seen and not heard in these corridors.

PROFESSOR BRADY: Quite properly.

MR. STEVENSON: We were happy about one thing, the role of the secretariat. We were afraid that the meeting would revolve around the discussion of the federal papers solely; but the secretariat, partly at our urging, compiled a check list of each of the points of each of the

agenda items, the positions taken by the various governments in their propositions or in their position papers; and they went through the headings of these check lists as the way of going through the agenda. As well, of course, I think the secretariat drafted the communique.

So we felt that here we did have it working in the way it should, and we did not have a totally federally dominated agenda procedure.

PROFESSOR BRADY: In other words, there was really a collective effort in this.

MR. STEVENSON: More so than before.

PROFESSOR BRADY: Which is a marked innovation in a federal-provincial conference, I would think.

Incidentally, Mr. Trudeau made a remark the other day which I think is a fitting remark in this discussion, namely, that the drafting of a new Canadian constitution is not a task for impatient and weak men. I gather he has come to this conclusion that it is a highly difficult task that is going to take a considerable amount of time, and also a little strong will here and there.

MR. GREATHED: His recent experience may have persuaded him about this.

THE CHAIRMAN: I think both points were an emanation of the meeting. I had the impression that he began in a slightly impatient note -- kind of "get things wrapped up and moving"; and then by

the end of it the obvious difficulties of doing so had changed that mood.

By the same token, I think the emphasis on the willingness to take strong action was also as a result of the meeting where the range of opinion was terribly apparent and the fact that at some point people were going to have to be willing to come together and come to some consensus.

I think both terms were perhaps very well chosen as reflections from the meeting.

MR. STEVENSON: I think he still remains a person who, in his own preference, would much prefer to see more things written into the constitution than the philosophy expressed here this morning.

I was looking at my notes when the taxing power discussion ended. He said to everybody:

"If you believe in a common market in
"Canada, you should be prepared then to
"write in limits in the constitution that
"taxation should only be applied on goods
"sold within a province."

DEAN LEDERMAN: As reported, he also backed off from piecemeal amendment, and that is new, is it not. They have said, "First this and then that and finally this". This sticks out in the federal paper of a year ago very strongly. Now there does seem to be the idea, which has always been strong in some federal circles, that you cannot do it piecemeal. This was the position taken from

the beginning by Ontario, that everything leads to everything else, and there must be one package in the end.

THE CHAIRMAN: In all of these things, at each time, after one finished the taxing power and then the spending power, the Prime Minister of Ontario remarked that whereas one might reach a certain consensus on each item in isolation, that for his part he did not want it understood that this is necessarily all agreed, because it was only when one had the complete profile and, in particular, the distribution of powers aspect, that one could have a meaningful conclusion to the business.

If we might leave that Item 2, I would like to suggest that we carry over Item 3, which is simply a report on the inter-governmental agreement which was signed on June 4th, and join that with Item 7; because the cultural and linguistic sub-committee is meeting over the noon hour, I understand, and I think those two items would suitably belong together for the agenda later on.

That would bring us to the two substantive matters of the day, which are related to the second volume of O.A.C.C. papers. One is the two papers by Professor Atkey, and the other is the paper by Professor Conway.

I do not know how you want to handle these two Atkey papers, Ed. We have further commentary on the Atkey paper from Dr. Forsey, and I think

Professor McWhinney has some comments he will want to make on the Atkey paper here today as well, and undoubtedly others have, too.

I think we have a rather clear decision we should try to make here today, to guide the publication process, because there was the original intention that these two papers would occupy a fairly prominent place in this volume; but I must say the extent and the character of the criticism that has been registered concerns me somewhat, so I think, perhaps, we had better try to get the thing right out here.

MR. GREATHED: Mr. Chairman, if I might suggest, perhaps we could discuss Professor Conway's paper first, and at the conclusion of that perhaps it would give members the opportunity to read Dr. Forsey's most recent comments which I received yesterday. Andrew, you might distribute Dr. Forsey's comments; also, if you would, the footnotes to Professor Conway's paper which we also recently received.

THE CHAIRMAN: I hope that all members got copies of Professor Conway's paper, which was sent out in the letter last week or the week before.

PROFESSOR McWHINNEY: Is Dr. Forsey's further comment on the Atkey paper?

DEAN LEDERMAN: Further comment.

MR. GREATHED: Could I summarize what we have. We have Dr. Forsey's original comment on

Atkey's paper; we have Professor Atkey's reply; we have Professor Lederman's comment -- all of which have been distributed. Now we have Dr. Forsey's reply to Professor Atkey's reply, and I only got it yesterday, so Professor Atkey has not had the chance to ---

PROFESSOR McWHINNEY: We have the statement of claim, rejoinder or one of the others -- surrebuttal. Are we at the seventh stage?

--- The chairman left the meeting briefly.

MR. GREATHED: Maybe without the Chairman, we will give the members the opportunity to look at Dr. Forsey's remarks.

PROFESSOR BRADY: Mr. Chairman, I wonder if it would not be simpler, since the Atkey paper has given rise to so much controversy, if we took Professor Conway's paper first.

THE CHAIRMAN: I think that is what you had suggested.

MR. GREATHED: Yes.

THE CHAIRMAN: Fine with me. Harvey Perry and I were just pondering outside that perhaps the simple solution would be to publish the Forsey-Atkey papers and let the whole thing go.

PROFESSOR McWHINNEY: Expurgated or unexpurgated edition?

MR. GREATHED: I think with respect to Professor Atkey's paper, what we are talking about is his paper on trans-national activities, rather than the paper on educational T.V.

THE CHAIRMAN: Let us go on with Professor Conway's paper.

MR. GREATHED: Members have received, I hope, copies of that paper, as well as, of course, today, the footnotes.

PROFESSOR BRADY: Mr. Chairman, I read the paper with a great deal of interest, and I thought it very interesting because it deals with general ideas. I am in agreement with most of the ideas, but I differ on one, however, that might be of interest since it is, I think, a salient one. I jotted down some remarks on reading the paper, and the remarks deal with that point primarily.

In other words, where I differ I comment, and many things on which I agree I leave with this general statement that I am in agreement with a great deal in the paper.

I think probably I might say, and John might admit this, that I have more sympathy than he has evidently with what, in the past, has been Canadian political pragmatism. I do not share, for example, his view of the British North America Act. It had some defects, no doubt. He writes:

"That we have been totally barren in

"the area of political theory is evidenced

"by the intellectual sterility of the

"B.N.A. Act and by our surprising refusal

"to do away with it".

Those are good fighting words, and the B.N.A. Act

admittedly does not contain general political ideas like that of the American Constitution which, of course, was a product of the late eighteenth century -- that age a contemporary described as the age of rationalisers and calculators who presumptuously thought that they could sum up rationally in a few sentences all that was significant in political wisdom.

I do not think that charge, as it were, would be relevant to the American Constitution entirely, but it would have some application. It was the age which produced a dreadful sophistry that constitutions should be treatises on political theory, and the French (of France, that is) never got over that sophistry and continued to produce throughout the nineteenth century a succession of constitutions which contained ideas but which constitutions usually failed because they were somehow unrelated to French traditions and circumstances. They were the product of all the intellectuals, idealogues of one kind or another.

The B.N.A. Act has merely one major idea, and a fairly pregnant one, I think: namely, that Canada needed, in order to survive, all the essential and fully-tested elements of the British constitutional inheritance. If Canada did not live by these elements, if it did not adhere to them, as it were, it would simply become part of the United States. It might, of course, do what the Spanish

colonies of South America did, that is, imitate the American republican system.

Canadians, if they had done that, would have made a better attempt, I think, at the imitation than the Spanish Americans; because they had various elements -- Presbyterian, Methodist and other elements in their spiritual make-up -- that would perhaps have produced some significant differences. However, to the degree that they became better imitations of the American political system, they would have become part of the United States or a kind of docile satellite politically of the United States.

The Canadian leaders of 1867 fully realized this fact. It is a sort of under-current, I think, in the confederation debates. It is not always made explicit, but it comes to the surface. I say that it comes to the surface not merely in the utterances of the English-speaking Canadians, but of some of the French-speaking Canadians, most of all Cartier. They realized, in other words, that they had a political tradition, constitutional tradition, and if they adhered to it they would have an independent nation in Canada, but if they did not they probably would not.

All that we have in the prosaic language of the British North America Act (and it is prosaic admittedly) are two things. You might say, first, a transcription of the British constitutional arrangements to Canada, or transfer of them. It is

not, of course, a full transfer or transcription, because Canadians felt that they knew a great deal about the system already. After all, they had been trying to work it for considerably more than a generation, that is, to adapt it to the colonial conditions of their country and the cultural and sociological conditions also. They did not need to reduce all their experiences to writing and, indeed, the spirit of the system was that you must, in the interests of flexibility, refrain from doing just that. There were some remarks here this morning about the dangers of making things too explicit, because to the extent to which you do so you probably tend to reduce the flexibility which in any working system is a great virtue, and has been in the Canadian. The British North America Act and the system it provided has been a flexible system, whatever else you may say about it, and it has stood up to a century of experiences, some of which might have destroyed a less flexible constitutional system.

Secondly, the Canadians made a fairly shrewd attempt to divide legislative power on federal lines. Here they thought they could benefit by avoiding American mistakes, and I think in some sense they did. One of the lasting benefits of its kind, I suppose, was the placing of the criminal law under the national Parliament.

The real test of a constitution, however, is

in its working, and the Canadian federal constitution, originating in a document that John describes as "barren of ideas", has worked as effectively as the American.

Admittedly it is difficult to compare the two systems in operation, because, after all they confront different geographic, social and political circumstances; but there is nothing, I think, in the record to demonstrate that the Canadian constitution is something basically inferior to the American, any more than there is anything in the record to demonstrate that Canada, as a country, is inferior to the United States. I do not believe that you can demonstrate this sort of thing, and there is not much use really in trying.

I think this point is worth emphasizing, because there is a tendency in the contemporary period to say: "Is not such and such an element of the American constitution or American system of government superior to what we have?", and so on.

This is really the central point that I raise, and I need not elaborate on it, though I could. I bring it in to perhaps stir you, John, to comment on it; also to stir other people in the group, because I think it is the point that stands out most conspicuously to a reader of your paper.

PROFESSOR CONWAY: Let me take your last point first. I do not consider, as I have said often, either the Canadian constitution or Canada

as a political society to be inferior to the United States; in fact, quite the contrary.

This paper which you have before you today really should be read in the context of the paper that is going to be published late this summer.

PROFESSOR McWHINNEY: This is part of a broader study, monograph or something?

PROFESSOR CONWAY: There will be in due course. It will be put together.

I feel that Canada is very fortunate to have been born after what Palmer calls "the age of democratic revolution" was over. Because that was the case, we are not burdened with this Rousseau-istic notion that democracy necessarily implies homogeneity. Therefore, we can have a democracy which rests on diversity, not upon assimilability. This is our great quality in Canada. People do not have to become Canadianized.

One of the great problems in the United States -- a great tragedy of the United States today, is that it has come up against the one group which is probably not assimilable, and it has no political theories of diversity -- that is, the blacks.

In saying that the British North America Act is characterised by intellectual sterility, I really mean that. That is not necessarily to say it was not appropriate at this time, that it has not served the needs of Canada for seventy-five years very well; but that was about a small group

of marginal settlements in North America.

As I point out in the other paper, this was written just two or three years after Pius IX's encyclical of errors and his letter *quanta curae* made the French Catholics incapable of indulging in independent political thought, quite literally. You just have to think of people like Bourgette and the rest and the way they laid down the doctrine. You could not think independently, as I cite in the other paper.

John A. Macdonald thought of himself, I would argue, primarily as a Scotsman who had come to a British colony; in fact he referred to Canada as a province of England, and he was very averse (and said so in Parliament) to Canada having any kind of relationships with another country: "They should all go through London and Whitehall, because we are a province of England".

PROFESSOR BRADY: Of course, that view has to be modified. I mean, he said other things, too.

PROFESSOR CONWAY: He said other things too, but he did say that.

PROFESSOR BRADY: He said other things, but he did other things later.

PROFESSOR CONWAY: It is not really to belittle the efforts. This is a very complicated problem in history of what these men did at that time. They were incapable of doing anything else because of their own limitations. They were not

broadly cultivated men because they could not be challenged by a great problem -- and the problem of bringing these provinces together all in the east was not a very big problem and it did not require some tremendous effort of the imagination.

I perfectly agree with you, Alec, about the limitations that were pointed out in the sophistry of the Age of Reason. His remarks were, of course, directed mainly towards the French revolution and, of course, he was a great sympathiser with the thirteen colonies. He thought about them in a different way.

I hope I have not suggested in my paper at all something which I do not feel, that this country is in any way, in its constitution or in its essence, inferior to the United States. I think, as a matter of fact, the reason why I am so interested in this matter is that I think this perhaps may be the time when Canada has to take the initiative in North America, in the new world north of the Mexican border. We have responsibilities internally to ourselves. We do not realize, really, a lot of us, I think, and I myself have to fight against this. I think of Canada as nine million people in a depression. We are actually 21 million people owning half the continent. We have more than just an internal responsibility; we have to see ourselves (and this is what I tried to put in very emphatic language) in the context of world

affairs. We have to see ourselves as other countries see us.

My conviction is that there is in the political society that we have developed, a potentiality for a political formula that is appropriate to the latter part of the twentieth century. The theories of enlightenment on both sides are no longer appropriate.

So what I have tried to do is to point out (and I have done this in this paper several times) that we have more to think about than the enjoyment of the second highest standard of living in the world. We have to articulate what we have become.

In a symposium which is held annually by the Carnegie Foundation, the Canadian delegate complained that no-one ever listened to what Canadians said. One of the American delegates said: "If you ever say anything worth listening to, believe me, we will listen". That was not intended as an insult; it was intended as a request. A lot of American politicians and political thinkers realize that their own ideas have been exhausted. This is why I believe that this is an overall operation that we are involved in; that the notion of regionalism is a more appropriate idea for our time than the notion of Rousseau-istic homogeneity; that the development of power, through the accidents of history, away from the centre is a good thing and not a bad thing, if it is handled properly.

As I pointed out, it is very curious that the intentions of both the Fathers of the American Constitution and the Fathers of Canadian Federation should have been completely frustrated. What was supposed to happen in the United States happened in Canada; what was supposed to happen in Canada happened in the United States.

I think one of the advantages of having lived out of Canada for a long time is that you do see its good qualities very, very clearly, because you are always contrasting them with other societies. I do not think Canadians realize this because of the pragmatism that Alec referred to. Pragmatism is only valuable if it is a pragmatic application of a generally accepted political philosophy. I think our function here is to extract that political philosophy from our experience in the past century, and to build a new constitution on it.

PROFESSOR McWHINNEY: Mr. Chairman, I think this would be a very valuable paper to publish at this stage, and I could make one very specific comment in relation to that.

I think we all know that Premier Bertrand is a federalist who wants to stay within the confederation, and one also knows that he is against special status. He is looking for a philosophical rationalisation searching for the Quebec position, which involves understanding the case for regionalism within the country, but a regionalism that could well

have Ontario and Quebec in substantially similar situations -- that is to say, something away from special status and away, of course, from the ultimate solution (if it is a solution) of separatism.

Some weeks ago in an article in LeDevoir, I sketched out a few ideas of the term I call "pluralistic federalism". I thought this might help this process of evolving a democratic alternative within confederation for Quebec figures like Premier Bertrand. I think this would be a very valuable paper to have published. I do not necessarily say it would be fully accepted, but it would generate a debate on philosophical premises and could be very helpful to the Province of Quebec. In that sense, because people are discussing philosophical premises. The tendency in what Quebec calls Anglo-Saxon provinces is not to discuss premises, but to discuss problems, and unfortunately not to conceptualize them enough. I think this would help what I would regard as constructive trends in the Quebec debate; it being understood, of course, as I have understood with all the papers published involving one and certainly in this forthcoming volume 2, that they do not necessarily represent the opinions of the Ontario government; that you are publishing them because you think they are thoughtful and constructive approaches that offer suggestions for solutions from the present constitutional impasse.

I agree with John, for perhaps not different reasons but for different types of argument and more juridically based arguments: I am satisfied we are dealing with two great tendencies at the present time: the centrifugal tendency that has seen continental-wide and even inter-continental type of decision-making, on defence, foreign policy, the main lines of economic policy.

We are losing our independence in certain ways inevitably, as all countries in Europe are, all the countries in the Communist bloc are. I also see, and I see this in Eastern Europe and Western Europe, too, a very healthy tendency to decentralize decision-making in very important matters of social policy, cultural policy, and even some elements of economic policy. I think this is a trend.

I think this paper would provide a very constructive base for discussion, and come really at just the right time.

If there is any fear of it being misunderstood as committing the Ontario government, I think this has been disposed of with our views in volume 1: the papers represent thoughtful contributions by thoughtful scholars. I think this is one of those papers; I think it would be very healthy right now.

MR. CALLAGHAN: What is the relationship between this paper and the one you are going to

publish?

PROFESSOR CONWAY: That one is an examination in terms of both history and political theory, of the British North America Act: that is what was its social and intellectual content. For example, I examined the background of all the Fathers of Confederation; where they went to school and college, where they came from and so on; what were their pre-suppositions, what were the limitations necessarily imposed upon them by upper and lower Canadian culture at the time.

MR. CALLAGHAN: Do you suggest the two papers should be read together? I ask that because of the point you made this morning very forcefully, and you made it far stronger this morning than in your paper. I just wondered if by some process of reasoning you had assumed that the people who had read this paper would also be familiar with the subject matter of your other paper.

PROFESSOR CONWAY: Yes, I intend to put them together with some other papers within the next year or so.

One thing I would argue is that we have suffered from a solely legal interpretation of our constitution.

PROFESSOR McWHINNEY: I think this is true.

MR. CALLAGHAN: Very true.

PROFESSOR CONWAY: Sociology and

psychology, we have not asked questions about that.
I go into that very much.

PROFESSOR BRADY: We have not really
examined or discussed our premises.

PROFESSOR CONWAY: We have not.

PROFESSOR BRADY: It is very uncharacteristic
of Canadians to do that.

PROFESSOR McWHINNEY: Very uncharacteristic
of English-speaking Canadians.

PROFESSOR BRADY: Of English-speaking
people, that is right, too.

PROFESSOR CONWAY: Not necessarily. After
all, when you think of the tradition of political
thought that stretches from Acton to the present
day in Great Britain, there has been a tremendous
amount written.

PROFESSOR BRADY: Since the industrial
revolution there hasn't been so much.

PROFESSOR McWHINNEY: That is a long time
ago, but I think you are right.

PROFESSOR CONWAY: An interesting point,
Alec.

PROFESSOR McWHINNEY: 175 years.

PROFESSOR BRADY: Well, the industrial
revolution has been in process; it is still in
process.

PROFESSOR McWHINNEY: Marx was not Anglo-
Saxon, anyway.

PROFESSOR CONWAY: I was going to say,

with the industrial revolution Marx took over the job of political theory.

PROFESSOR McWHINNEY: Yes, and we became pragmatic.

DEAN LEDERMAN: While I share Dr. Brady's reservations about the (perhaps) disparagement of the B.N.A. Act, that may be because I have a certain amount of vested interest in the B.N.A. Act -- vested classroom interest, anyway.

PROFESSOR McWHINNEY: You have a rendezvous with the B.N.A. Act.

PROFESSOR BRADY: You may have professional bias in your judgment.

DEAN LEDERMAN: I just want to say I found the paper most stimulating and provocative. I think the word I would use is astringent, and I mean it as a compliment.

I think it stands on its own feet, in connection with Mr. Callaghan's point that it needs to be read with another paper.

It can no doubt be amplified and understood better in the light of the other paper, but I think it stands on its own feet, and I agree it is precisely the sort of thing that ought to be published at this time.

THE CHAIRMAN: I was impressed though with Frank's point, because I wondered about this earlier myself. The ground you are working on here, John, is certainly of a very different

character from what we have had and from the other material we have in the book.

I too think it is a very important basis to work on. I think that certainly corresponds to the concern I have felt all along, that we are so wrapped up in the machinery and the legalism and institutional arrangements and everything, that we run ahead of ourselves in asking about our fundamental bases.

As I think back to when this Committee was formed, and as I think back to my own personal interest in the process, I guess one has always retained the hope that sometime, somehow, we might really get down to asking ourselves the questions about ourselves. I am very enthusiastic about this venture and, again, I really wonder (as Frank has put it) if the attention to the question brought about in the paper might not be fortified by as much emphasis as we can muster.

I do not know what the timetables are and I do not know what the proprieties are and your own views, but if it were possible to have the other paper appear here as well, the problem of getting exposure to these things in the Canadian market is such that the more places the better, I suppose.

PROFESSOR CONWAY: This other one is coming out in a book of essays.

MR. GREATHED: Three parts.

PROFESSOR CONWAY: Are there three?

MR. GREATHED: Nationalism, diplomacy ---

PROFESSOR CONWAY: Yes, it is coming out when? The last word I got was the end of the summer.

PROFESSOR McWHINNEY: Who is publishing it?

PROFESSOR CONWAY: I do not know what U of T Press would say about having it also published here.

THE CHAIRMAN: I do not know what they would say. We have a precedent. Some of the papers our Committee have published in the last volume have previously appeared or simultaneously appeared elsewhere in journals.

PROFESSOR McWHINNEY: It is a matter of contract, though. It really formally depends upon whether you gave copyright to the journal or retained it. If you gave it to the journal or other publication, most publications willingly grant permission to re-publish, provided you put in an asterisk and "Previously published ..." and so on, and they waive the fee.

PROFESSOR BRADY: That refers to journals, but if published in a volume ---

PROFESSOR McWHINNEY: Even there I send it down. The cross-publicity is helpful.

THE CHAIRMAN: That is the point. I think the argument is one of cross-publicity. The more references you have to this in another book, the better the advertising.

PROFESSOR McWHINNEY: If you gave the copyright to the U of T Press, why don't you ask them for permission to republish, and an appropriate acknowledgment will be made?

PROFESSOR CONWAY: This is a Festschrift for Fred Soward.

PROFESSOR BRADY: That raises another problem.

PROFESSOR CONWAY: Whether you publish it. My own opinion is I would like this to be published this summer, just flat like that. I hope it arouses a lot of controversy and I would be very distressed if everyone agreed with it.

DEAN LEDERMAN: Do you have a clear footnote reference to the forthcoming paper?

PROFESSOR CONWAY: To the other one?

DEAN LEDERMAN: In this paper, is there a footnote reference to the fact that you are enlarging on this or that point?

PROFESSOR CONWAY: That would be a good idea. No, I had not thought of that.

DEAN LEDERMAN: Simply give notice in the footnote that you are enlarging on this point in another paper that will appear, and name the publication.

PROFESSOR MEISEL: Mr. Chairman, I was going to suggest that and also something else which I think we ought to consider very seriously, namely that the exchange between Dr. Brady and Dr. Conway,

I thought, was very useful this morning, and there is absolutely no reason why the second volume cannot contain, in addition to the papers, themselves, an extract from the proceedings of the Committee.

PROFESSOR McWHINNEY: Or a separate note from Professor Brady.

PROFESSOR MEISEL: I think it would be very useful to have a strong footnote reference to the other papers, and also, perhaps, a slightly edited version of the Brady-Conway exchange that introduced this paper.

PROFESSOR McWHINNEY: A separate note rather than simply the minute.

THE CHAIRMAN: I agree with the objective. As far as the procedure is concerned, we have not attempted at any time before to pit ourselves through the sponsorship of this Committee in public dispute with one another, have we?

PROFESSOR MEISEL: No, but I think we both agree there could be a little preface to the paper saying: "In discussing this paper, Professor Brady made these criticisms".

PROFESSOR McWHINNEY: Why not a note, John? It is a simple thing; a note by Professor Brady, published with the permission of Professor Conway. That is very simple.

PROFESSOR MEISEL: There is a nice lively quality to this exchange precisely the way it

occurred.

PROFESSOR McWHINNEY: But the minutes are confidential and have been up to date.

PROFESSOR MEISEL: But if Brady and Conway agree that this part be published, then there is no problem.

MR. GREATHED: We can say it was a conversation overheard. (Laughter)

DEAN LEDERMAN: You do not say it is from the minutes.

PROFESSOR CONWAY: Discussion between ---

MR. CALLAGHAN: That may detract from the quality of your book if you start publishing conversations as against written articles.

THE CHAIRMAN: We should ponder that a little bit, you know.

MR. STEVENSON: I wonder, Mr. Chairman, if I might ask Professor Conway a more mundane, pragmatic, Anglo-Saxon question.

The last time I think we discussed general ideas, Professor Conway, you were speaking, with a good bit of approbation, of Mr. Bennett's proposal for a five-region Canada; and in your paper you dismissed the idea of a single prairie province, particularly one that extended up to the Arctic Ocean, as something that would be almost a country by itself.

I have much more sympathy for Mr. Bennett than for your proposal, for a couple of reasons.

One is that I think extending the provincial boundaries north to the Arctic, and having strips out of the North West Territories attached to the provinces below them, would be a bit of an administrative monstrosity. I think the part of the North West Territories north of the prairie provinces is pretty well an economic unit at this point. I think to draw two lines in there would create real problems.

The other thing is I think there really has been increasing evidence of inter-provincial solidarity among the prairie provinces. The population of the three would certainly still be considerably below either Ontario or Quebec. The area would be large, granted, but I do not dismiss this at all as ---

PROFESSOR CONWAY: I would certainly take your opinion on that, Don. It was just an idea I had.

Incidentally, as to the pragmatic British Anglo-Saxon, the British people live almost entirely by myth and symbol. They are only pragmatic when they come out to their former colonies. I have just been in London. You have only to spend a year in London and watch the way the whole panoply of myth and symbol is inter-woven into the life of the average citizen, to say nothing of the machinery of politics. They are not pragmatic.

THE CHAIRMAN: You might even extend myth

and symbol a little further and say fantasy.

PROFESSOR CONWAY: Oh, yes.

MR. STEVENSON: This would make another good footnote. (Laughter)

PROFESSOR McWHINNEY: Only the Japanese and Germans are pragmatic today.

THE CHAIRMAN: Preparing Andrew for his return to the U.K.

PROFESSOR BRADY: Incidentally, reverting to Don Stevenson's point, as I understand it, you take the Bennett theme and you would make the prairies one.

MR. STEVENSON: Yes.

PROFESSOR BRADY: And the Arctic.

MR. STEVENSON: Possibly.

PROFESSOR McWHINNEY: Particularly the Arctic. It is being gobbled up by Japan now, with inadequate federal knowledge or supervision or study.

PROFESSOR BRADY: I think I would agree with John on this matter. You are creating an immense area there, and if there is value in decentralization the need for the recognition of such value in such an area would hardly be very forcible.

The northern part of the three prairie provinces and the Arctic area, that is, in the Territories, has a certain kinship within the area; there is a sort of northern regionalism that is emerging. One notices it in individuals from northern Saskatchewan or Alberta. They are talking

about questions, after all, that are somewhat the same kind of questions that people in the Territories are talking about.

DEAN LEDERMAN: Or northern Ontario.

PROFESSOR BRADY: Or northern Ontario to some extent, too. I think it would be much more logical and you would escape the great administrative difficulties of creating such an immense area as one province, if you extended their boundaries north.

PROFESSOR McWHINNEY: The Arctic is being run away with, though. It is handled by a minor federal minister, always very junior, and without much sophistication and canniness, and the economic decisions are just extraordinary and have been made by, in effect, default and without any Cabinet discussion. I think at least Mr. Bennett would watch the situation more coherently and continuously than is shown in Ottawa now.

PROFESSOR BRADY: That would apply also to the prairie provinces administration. I think actually Ontario has an interest here, though I suppose it is reticent, and Mr. Robarts would be reticent about making remarks on what should be done in the west; but certainly the Advisory Committee on Confederation is not inhibited, or should not be, from looking at questions of this kind and trying to state a case for some change in the existing regime, because it is an

unsatisfactory situation, I think, at the present.

I do not think the Territorial government scheme is satisfactory, and I doubt that it is going to be. I cannot envisage, as was usually thought, that you will create a province in that area. I think that would be just adding to difficulties. It would be like creating, again, a province that would be weak in itself, for different reasons perhaps than the weakness of the maritime provinces.

PROFESSOR CONWAY: Yes.

PROFESSOR BRADY: But nevertheless, weak.

PROFESSOR CONWAY: Is there any way we can get some information on the investment that is going on, Mr. Chairman? We have all read in the paper in the past two days about the Americans who become very interested in the water resources of the north and, as Ted says, the Japanese now ---

PROFESSOR McWHINNEY: It is just astonishing.

PROFESSOR CONWAY: Who is supervising this?

THE CHAIRMAN: Somebody asked that question at an earlier meeting.

MR. GREATHED: We looked at that. Andrew might be able to say something.

MR. MURRAY: We had one of our associates look into this question, and the results bear out your contention that nobody knows what is going on. The federal government has virtually no information on that.

PROFESSOR McWHINNEY: Of course, you have a

very minor minister always in Northern Affairs.

It may be for the better that it is being, in effect, economically colonised by Japan, but it is a complete take-over and occurring without apparently anybody being concerned.

THE CHAIRMAN: Is this "minor minister" or "Minister of Mines". (Laughter)

PROFESSOR McWHINNEY: I think they both equal the same -- nullity.

DEAN LEDERMAN: What shook me was, in the business section of the New York Times just last weekend, that British Petroleum (the British company) holds major interests in the big American discovery in the northern Alaska coast, and they have bought Atlantic and Sinclair in the United States. It is the biggest English buy into the United States in modern times.

PROFESSOR McWHINNEY: It is brilliant finance.

DEAN LEDERMAN: And the tankers to serve the east coast are going to have to go through the north west passage, through the Canadian Arctic. The predictions are apparently that some of the Canadian Arctic islands have discoveries just as big.

PROFESSOR McWHINNEY: It has been hit tangentially in a way by a study begun for another purpose -- the federal study of the international boundaries and sovereignty in the Arctic; but on

the economic side, as far as I know, there is no administrator, federal or provincial, who has studied this in a coherent, continuing way.

DEAN LEDERMAN: Have a care -- the British are coming.

PROFESSOR McWHINNEY: That meets John's fest.

THE CHAIRMAN: This is perhaps a bit off the subject, but it is à propos in another sense that what we are really talking about, apart from the constitution or confederation, is Canada. I have to admit I increasingly come to wonder if Walter Gordon has not been right after all; because we always talk about the economic costs, benefits and so on, but the point that John is trying to get us to talk about is the fundamental question, I suppose, of the social psychology of a nation.

Recently I have met and spoken to two or three people who described to me very frankly the character of thinking that goes on when they have lived through a situation where, shall we say, someone like Gulf Oil takes over a company like British American, or any other situation, and describes the processes in which a new set of value judgments are brought to bear from outside the country on an internal operation. It is a little bit shattering to really contemplate and see what that involves.

Incidentally, I think Neufeldt's book on

the Massey-Ferguson story, from what I have seen of it, is going to be very interesting on that point, too.

Entrepreneurship is one thing, but the transplanting of the national imprint to a country, on a country's life, is another thing. We see this going on in the older part of the country, but it perhaps underlines the importance of some responsibility that one has to at least prepare oneself about it in those parts of the country which are still to be created, at the very least.

Maybe at this stage, the more so since there are other processes where constitutional machinery is being discussed now and something is being done about it -- maybe this is the Advisory Committee on Confederation; maybe we should be broadening our thinking about Canada. It is tougher ground to work.

DEAN LEDERMAN: When Saskatchewan and Alberta were founded, I recall somewhere in the major debates on the subject (though I cannot recollect who was discussing it or where); anyway there was major discussion and, after all, this had been one unit of the North West Territories and there was quite a developed North West Territories government for Saskatchewan and Alberta and why split it in two? Precisely this point about Canadian pressure was made. Of course, that was 1905, and immigrants were pouring in and they thought they were on their way to

100 million population. That was the psychology of the period: "So split it in two -- no Canadian pressure".

PROFESSOR McWHINNEY: Don, I think, is right. On this particular point, you can probably object on many grounds to Bennett's proposal for the five regions and the Imperialistic designs on the Arctic; but in simple, rational allocation of community resources and on a straight decision-making basis, I strongly suspect British Columbia administration would be more effective, more rational, more coherent under present circumstances than the present federal administration. There may be other systems that are better still, but at the moment I think it would move, in effect, into a vacuum.

MR. CALLAGHAN: I think some of the federal administrators would agree with you on that because when you proposed that and you were talking with some of them they indicated it was the only feasible solution for parts of the Yukon, for getting products out and materials in.

PROFESSOR CONWAY: One of our problems, and it seems a very subtle one, is this take-over by American and British financial interests: I was amused that the Globe & Mail seemed so very happy that General de Guingand and his South African pals had bought out Canadian Breweries. There is no difference between that and some American interests

as far as I am concerned.

THE CHAIRMAN: Because they had avoided the Americans?

PROFESSOR CONWAY: Because they had avoided the Americans, but one of the problems is that in the minds of Great Britain and the United States -- that quotation from the American sociologist with which I finished my paper is an accurate reflection of what most Americans think. Neither the British nor the Americans really consider us as a nation. I think that is a hard fact that we have to face.

If you go through Harold MacMillan's volume "The Blast of War, 1939-1945" -- he was Minister of State in the Mediterranean and therefore in political charge of the whole military operation; and when we had, first, a Canadian Division and then a Canadian Corps and you look in the index under "C" you will see no mention of Canada, Canadian Army, Canadian Corps, Canadian Division -- there is not any in the book. If you look under "B" you will see Brazilian Division.

If you look in George Kennan's memoirs of his diplomatic career under "C", you will find no mention of Canada.

This seems to me to be very wrong, and the reason for it is that we have so far failed to say what we are.

I was particularly irritated, after reading MacMillan's book (which is a very fascinating book, by the way) because we gave them not only a whole army, but I think we gave them \$5 billion in

cash gift afterwards.

It is that kind of psychological vulnerability that we have that has its economic repercussions. I agree with you about Walter Gordon to a very large extent, Ian, but in addition to that we have to have a notion of ourselves behind it that other people recognise. That means a real assertiveness, and I think it is one of the first things we have to do in order to recapture our own economy and the running of our own future.

PROFESSOR BRADY: Of course, we perhaps suffer from the fact that the British think of us as part of the family and then, strangely, the Americans think of us as part of the family.

PROFESSOR McWHINNEY: And so do the French under de Gaulle and Pompidou.

PROFESSOR BRADY: The French less so certainly than in the past, but that is a factor; and, of course, our close relations with both make it understandable why they should have such a view. This is not to deny, I think, your point that we would like them to recognise us as us, as it were, somewhat more, although we probably want basically to be close to both, because our development has been such and circumstances in the future, it seems to me, will make it no less desirable. We have not been, in other words, an emphatic nationalist community, and that does not disturb me in the least. It is true I am a Canadian by adoption only, but I

think it is admirable not to be nationalistic in the sense of other groups.

PROFESSOR CONWAY: I quite agree with you.

THE CHAIRMAN: You come from a very nationalistic part of the world, though.

PROFESSOR BRADY: I discovered it was too nationalistic just about the time I left.

PROFESSOR CONWAY: I agree we do not want to be emphatically nationalistic, but we want an emphatic political personality internationally.

DEAN LEDERMAN: On June 6th, Brigadier Malone told the story (printed in the Globe) of the terrible time he had as principal Canadian press officer at Headquarters, Allied Forces. One out of every five soldiers landing on June 6th was a Canadian, and he could not get them to put the word "Canadian" in the communique, the Americans or the British, and he had to threaten to go to Mackenzie King before they would do so.

PROFESSOR MEISEL: Mr. Chairman, I think this has been one of the most fruitful discussions we have had for a very long time, and we ought to decide now or come back to it later today to decide what, if anything, we want to do about this.

THE CHAIRMAN: Yes, I would like to suggest, in the interests of good order and as a rationalization of the fact that luncheon is ready, that we come back to that question of principle for this Committee later. Perhaps we could conclude

now, if that is your wish, the discussion of Professor Conway's paper.

There is just one question I was not certain about. John, the other paper that is coming in this book of essays, is that the one you were working on last summer?

PROFESSOR CONWAY: That is a modified form of the one you already have.

DEAN LEDERMAN: The earlier one.

PROFESSOR CONWAY: The earlier one of about two years ago.

THE CHAIRMAN: That was circulated about that time.

PROFESSOR CONWAY: Yes, and I was not here when it was discussed.

THE CHAIRMAN: But this one incorporates those thoughts into the context of the federal-provincial conference; that becomes your scenario, so to speak, for the expression of those ideas.

PROFESSOR CONWAY: Yes.

THE CHAIRMAN: Is that satisfactory then, to conclude the thought on Professor Conway's paper as such, and we will try later this afternoon to come back to the question about the behaviour of the Committee, as it were, in the future in this matter?

PROFESSOR MEISEL: I would like to urge again, Ian, the possibility of publishing that exchange on the Conway paper. I know it is

unconventional.

THE CHAIRMAN: We got off that. How should we leave that one?

PROFESSOR MEISEL: I think whoever is going to edit the paper -- Ed, presumably.

THE CHAIRMAN: Should look at that. I think if we can somehow ---

MR. STEVENSON: We may have a principle when we discuss the Atkey paper, whether or not we want to have any commentary.

THE CHAIRMAN: That is true. I am anticipating that, as a matter of fact. I was going to say, in the usual Canadian fashion, if we can accomplish your objective without disturbing our overruling principles, we may do so; but I think we would finally want John's permission for anything that appears in this context.

PROFESSOR CONWAY: Absolutely.

THE CHAIRMAN: Because it could distort the place of your paper. The editor and I will keep you apprised on that point as we work away at the book.

--- Luncheon adjournment.

THE CHAIRMAN: May we reconvene and start on the afternoon's business. I think we might as well face the Atkey-Forsey question now, and see whether it ends up as the Atkey-Forsey question or the Forsey-Atkey question.

There are two papers. Your impression, Ed, is that the one on television is not in contention?

MR. GREATHED: That is correct.

THE CHAIRMAN: Is this generally agreed among the Committee, that the television paper is satisfactory?

PROFESSOR MEISEL: If I recall Dr. Forsey's opinion, it was that it was not quite as disastrously bad as the other one.

PROFESSOR McWHINNEY: One of the comments I made to you, Ian, in writing on the first paper, I make again in relation to the second.

THE CHAIRMAN: I wondered.

PROFESSOR McWHINNEY: Atkey is a very young man, and I think he has very considerable promise. I helped him get his first scholarship for study away from Canada, and I have been interested in his career since. However, he writes like a young man, in a very loose and discursive way. I think both his papers would benefit if they were reduced to about 15 or 20 per cent of their present length, by focusing more on the points and the supporting material being better organized. Both papers strike me, as I said to you, as chapters in a standard American doctoral degree. I would not say they are patterned, but he has not yet learned how to write economically and in a concentrated way.

This is something that could be handled in one of two ways depending on your decision that you want to make to publish them. You do one of two things: persuade him that Ed and Don help as editor substantially to cut in content and concentrate it; or else you can say, "Look, we like chapter 3 of this study. Re-write it as 5,000 words length".

I honestly think, though, that stuff is grossly inflated in length, and it would mean more if it were concentrated.

THE CHAIRMAN: I must say I would agree with that opinion myself, contents apart. I did have the impression that these were still in an earlier draft stage, fairly loosely knit, and could profit from editorial tightening.

PROFESSOR McWHINNEY: Substantially.

THE CHAIRMAN: What are your thoughts in that regard, Ed?

MR. GREATHED: As you said, Mr. Chairman, when we initially looked at the papers, we thought that rather than think of them necessarily in terms of publication immediately, we would get them out to the O.A.C.C. for their comments primarily on the content.

In contemplation of their publication in the second volume, I think we could look at this editorial problem. I confess I have not really looked at it in exactly those terms.

PROFESSOR McWHINNEY: The two points run together a bit. Re-reading Eugene's criticisms (and I did not have the pleasure of hearing Eugene make them in person so that one loses 50 per cent of their thrust) I have the feeling that if he had been asked to re-write this (I use the figure deliberately) and cut it down to 20 per cent of the present length, he would have chosen his words more carefully and shown better regard to legal concepts and terminology. What happens is that you get a sloppiness, and I think a good deal of Eugene's report here is less the policy, which Eugene is always reacting against, than a certain gaucherie sometimes in the formulation of concepts, and that editing might cure a lot of this woolliness and loosely of phrasing. As you know, Eugene is pretty tough on this business.

I wondered, frankly, whether with editing by people as skilled as Ed and perhaps yourself if you are able to help, a lot of Eugene's objections might not disappear. Their contents and style do relate together in certain areas, and I think they are both examples of this.

PROFESSOR SYMONS: Mr. Chairman, I share the general tenor of Professor McWhinney's sentiments. However, I think that for editors, even as gifted as you and Ed, to reduce a paper by 80 per cent is a fairly demanding task. I think if we do feel it is desirable, it would only

be fair to say so to Professor Atkey.

THE CHAIRMAN: Both in the interest of honesty and protecting myself against future criticism, I should hasten to say that I am not really an editor at all. This mantle entirely falls on Ed's shoulders.

DEAN LEDERMAN: Mr. Chairman, with all due respect to Professor McWhinney, I think 80 per cent shrinkage is not on the cards. I also think that I agree it needs a lot of editorial tightening-up in the style, and it would profit from this, but I think one must ask Mr. Atkey to do this himself.

PROFESSOR McWHINNEY: As you know from our experience in writing books, the editors say: "Where can you reduce? Will you speak to the author?", and he panics and so on, so it is a cooperative process in which he does the work.

THE CHAIRMAN: Cooperative editorialism.

DEAN LEDERMAN: There is a fair amount of repetition in it which could be eliminated.

THE CHAIRMAN: Yes.

DEAN LEDERMAN: It is inevitable, as you say, Mr. Chairman, in the earlier drafts of a study. You concentrate on getting the ideas down first, and usually you do it two or three times, really pruning the thing at a later stage.

THE CHAIRMAN: Taking the television paper, can we ask Mr. Greathed, on behalf of this Committee, to request Professor Atkey to proceed

with an editorial tightening and reducing of his paper as far as he can possibly do it, and presumably Ed and his staff, as general editors, will be going through it thereafter. They could set this paper aside.

PROFESSOR FOX: It will have to be pretty substantial, Mr. Chairman. I was looking at this again, and this broadcasting paper is 88 pages and the trans-national is nearly 200.

DEAN LEDERMAN: 72 pages of text.

PROFESSOR FOX: I know, but how much have we got?

THE CHAIRMAN: How much text would that be?

PROFESSOR McWHINNEY: 72 text is about 25,000 words.

DEAN LEDERMAN: About 300 words a page, letter size, single spacing.

PROFESSOR McWHINNEY: 20 or 25 thousand words, trans-national. We are getting into substantive content now, and what worried me is that, as I said, it is all old ground. I did not really find anything new in it. It has been battered back and forth. If Gerin-Lajoie is presenting his viewpoint and saying what he has to say in 3,000 words, it seemed to me rather silly to try to cover the same ground in 25,000.

I had two reservations about it. Firstly, it does not, in my view, break any new ground. Secondly, I think he is pretty light on documenting

of source material. I use these words advisedly. There could be objections from various people at certain stages unless he acknowledges a bit more. This is standard doctoral degree writing, but it is not good scientific writing.

I did not agree with Eugene's basic point, as I gather, of objecting to the substantive comment, the policy. I thought the whole purpose of these papers was to open policy issues which need not be the policy of the Ontario government; that as long as they were presented in an intelligent and rational way and contributed to the present debate, we would feel free to publish them. I felt Eugene raised a point with which I disagreed here.

On the other hand, I do not agree with Bill's point that Atkey's position was relatively close to that of the federal government. I think quite the opposite. I think Eugene was right in identifying a fundamental opposition, but I disagreed with Eugene's conclusion that perhaps for this reason it should not be published. That raised the issue of the editorial policy behind our papers.

My reservations which I expressed to you were really as to the length and sloppiness, plus the fact of not breaking new ground and relying heavily on secondary authority which I do not think he fully acknowledges to the extent that is proper in these matters. A tighter, shorter discussion would perhaps eliminate a lot of the second points.

THE CHAIRMAN: Are there other views now on the substance of the paper?

PROFESSOR FOX: We are just discussing broadcasting at the moment?

PROFESSOR McWHINNEY: No, discussing trans-national.

THE CHAIRMAN: We sort of slid over there. I think you were discussing trans-national. I was thinking we might conclude before we went on to that, on the broadcasting one. Apart from the question of length and style, is there anything else in the broadcasting paper?

DEAN LEDERMAN: It is mainly a straight survey.

PROFESSOR BRADY: Yes.

DEAN LEDERMAN: Does a reasonably good job on this.

THE CHAIRMAN: Can we pass along then? We can resume, Ted, taking off from your comment about the trans-national paper.

PROFESSOR McWHINNEY: My specific recommendation is that he might be asked to take chapter 3 of his study and reduce that to shorter, more concise and tighter form. I thought that would be worth publishing. That would be my own suggestion concerning it. As I say, I do not think that for anybody following these last few years of debate, particularly among Quebec politicians, with all their extremeness of view, that he breaks new ground.

His assembly of the arguments pro and con the federal-provincial jurisdiction was a helpful one, and on a more tightly written basis I think it would be worth publishing.

PROFESSOR BRADY: Mr. Chairman, I thought there was interesting material in it, but I agree with those who consider it needlessly prolix. I think it could be shortened and sharpened, and that would be an advantage, apart from making it easier to fit into a book of papers.

As to the argument on the position of the federal government and Professor Lederman's view that he is much closer to the federal position than he admits, I was not clear that he was.

PROFESSOR McWHINNEY: That is my conclusion, too. He knows more about the subject than I do. Certainly I think the Chairman's generous offer to confer with the author on expressing his proposals, ought to be taken up.

I think Atkey, as has been said, is a young man, and young men, even if they do not always recognise the fact, can get advice from those who may be older and more experienced. I think he would probably be gratified by advice.

He called me about two weeks ago and asked me to do him a favour. I suspect he has probably asked you to do the same favour. He asked me to give a speech somewhere. I might have taken the opportunity then to speak to him, but since I

suppose he had no official hint then that the thing might be published, I thought it might be best not to discuss it with him, so I did not. Maybe that was an error of judgment. If I had known that you, for example, have spoken to him, I would have felt prepared to give some sound advice. I think he would respect advice from somebody as tactful and authoritative as Bill or from you, Alec.

PROFESSOR BRADY: I would not pretend to give advice on this matter. I leave this to those of you who know him. I found him a little too legal, as it were. It does not help you to arrive quickly at what would be, in my opinion, the sensible approach to a policy, as it were, today in the federal system, and that is what I am only interested in. I do not think any advice I could offer would be really relevant, but I think there could be suggestions from you and Bill, who are more in sympathy with his point of view, and that is the type of adviser who can be very helpful to him.

I am inclined to agree with those who have stated that reducing it by 80 per cent is giving him a job really that he might well shrink from, but some reduction would be useful, and make the paper better and easier to read for one thing, because it is not particularly easy to read. At least, I did not find it so.

After all, this volume of papers is intended to be not on the highly technical level, I

assume. We think that ministers of the government will read them, at least we hope so, and high technicalities are apt to be repellant to busy men like ministers. I think that would make it more readable.

Cutting it down in length and so on, without sacrificing what is significant, seems to me the ideal at which to aim.

MR. GREATHED: Mr. Chairman, I make one suggestion, after listening very carefully to the discussion. Administratively it might be a little simpler if I dealt with Professor Atkey on these matters, and used various members of the Committee as we saw fit in terms of their supplying specific advice. I have listened very carefully to the discussion, and I think I have the sense of what the members want; but I think, from an administrative point of view, rather than barraging Professor Atkey with phone calls and letters from very many different sources, it might be a little easier if we did it all from here, if that is convenient.

THE CHAIRMAN: I think, Ed, you might combine it. I think you might make the first overture to him in terms of the general points of view expressed here and the general objectives, and suggest to him in turn that there are one or two here (such as Professor McWhinney and Professor Lederman) who would be in a position and

who would be willing indeed to provide some helpful and sound advice on the approach and the contents of the paper. Then perhaps he might contact them. I don't know if that is the best way.

DEAN LEDERMAN: Mr. Chairman, before we leave this topic, I would just like to make a point or two briefly, because I have got myself into the position of being the ham in the Forsey-Atkey sandwich.

THE CHAIRMAN: That is at least a solid contribution.

PROFESSOR FOX: What about the mustard?

THE CHAIRMAN: As long as we do not now have the Forsey-hammy-Atkey paper.

DEAN LEDERMAN: I think you, Alec, made just the right comment that it is needlessly prolix and it can be reduced a great deal. I think Mr. Atkey himself can do that. There are some of his phrases such as "partaking of trans-national activity": you do not partake of it but you either undertake it or engage in it. If it is governmental activity, governments initiate it. There are a few things like that.

THE CHAIRMAN: What is the subtlety of the word "trans-national" to begin with?

PROFESSOR McWHINNEY: If I may say so, that is a term that I introduced in 1965 in the debate with Morin. We simply wanted a term other than international, which, strictly speaking, would

imply the power of the central government in a federal state.

THE CHAIRMAN: That is what I presumed.

PROFESSOR McWHINNEY: So we deliberately coined another term "trans-national".

--- Off the record discussion.

DEAN LEDERMAN: I have a couple more points on substance, Mr. Chairman, if I may. I think Mr. Atkey spends much too much time on the Lieutenant-Governor and the 19th century cases. I think that could be reduced a great deal.

I think probably as far as historical and legal arguments are concerned, there is one main argument for and one main argument against. I do not think there are eight each way.

However, that is not the main thrust of his paper. The main thrust of his paper is the projection of activity in the provincial subjects across borders, subjects of provincial jurisdiction; and that in the modern world there tends to be more of it rather than less of it, and there is a very real problem here which is not being faced up to in the current discussions. I think this is where the main current of his theme lies, aside from all the deficiencies of style and prolixity and so on.

As to the difference between federal views and provincial views, I read his paper again very carefully and I read the federal White Paper carefully in the last twenty-four hours. For

instance, I draw your attention to two things in the paper "Federalism and International Conferences on Education" issued by The Honourable Mitchell Sharp. On page 52 Mr. Sharp is talking about the federal government composing delegations for international conferences on education, and he says this in Item 8 at the top of page 52:

"The general guidance provided by the
 "government to Canadian delegations
 "attending international meetings on
 "education --- "

He is talking about the Government of Canada there --

"-- should not deal with education
 "matters as such but be limited to questions
 "with foreign policy implications,
 "Canadian budgetary contributions, and
 "any other matters of federal concern which
 "may be under consideration. The position
 "to be followed on educational matters, as
 "such, should be for decision by provincial
 "governments, or, as appropriate by the
 "Council of Ministers of Education"

That means the Council of Provincial Ministers of Education. Here we have Mr. Sharp saying that when one of these delegations is heavily representative, as it should be, of the provinces, education ministers and various officials, from the provinces, that the instructions to that delegation, and specifically policy instructions, are for decision by

provincial governments or, as appropriate, by the Council of Ministers of Education.

PROFESSOR BRADY: That is very interesting. Does Atkey refer to this?

DEAN LEDERMAN: No, he does not refer to it, but I am referring to it to defend myself in the proposition that when you really go through and compare these you will find points at which Atkey and Mr. Sharp and the Honourable Paul Martin (who did the earlier paper) are taking the same position. The use of the Katanga report -- representation abroad, sending and receiving diplomatic representatives, Atkey says is federal, and that is one of the points on which Martin and Sharp insist.

Atkey also says that regardless whether the provinces make independent international agreements or not, it is the federal government that is liable if there is a breach. His scheme for an executive review and veto, not by any court but by the federal Cabinet, I suppose, is more safeguard than exists now; at least it is arguable.

His suggestion that the Government of Canada possibly have been preoccupied with form and protocol (and up to a point quite properly so) is a valid one. If you preoccupy yourself with form and protocol, his point is that you overlook what you might call the projection of functional federalism into the international sphere. For example, most of the expertise on the regulation

of motor vehicles is in the provinces. If you are going to have international agreements on automobiles and tourists and the interchangeability of insurance certificates and automobile licences and the regulation of trucks and buses and all this kind of thing, the expertise is with the provinces.

The Achilles heel in the federal proposal for these joint delegations is: who instructs the delegation on matters of policy? That is why this passage right at the end of "Federalism and International Conferences on Education" is so interesting; because on education they say that on substantive issues of education that do not have implications for the federal government, the provinces must instruct or the Council of Provincial Ministers of Education instruct. That is the point I make there.

I would say, too, that, because I am defending Mr. Atkey's thesis or his theme as a point that should be made, that does not mean that I prefer his solution over others.

I think possibly in his latest memorandum on the subject, Dr. Forsey right at the end of it suggests that I prefer the merit of Mr. Atkey's solution. I do not necessarily. In fact I would favour other solutions over his solution.

I would, for instance, not attempt to draft a new 132 the way he has. I think he himself had the better solution. He said that you really

cannot draft a solution to it; you have got to work it out pragmatically. He should have stopped there and not attempted to draft it. He says: "I do not think it is very wise to attempt to draft", and then he goes right on and drafts it.

MR. PERRY: Not very skilfully, either.

DEAN LEDERMAN: Not very skilfully, either.

PROFESSOR McWHINNEY: This surprises me a bit, Bill, that you think this is surprising. This has all been said around three, four or five years. One new thing in it is, I suppose, that the federal government has come around and accepted it.

Really, is it any different from Morin's general proposals or Louis Sabourin's proposals or Gerin-Lajoie's?

There is nothing new in this, except his proposal -- which I consider the least interesting because it is swung out like that -- this proposal for executive review. Everything else covers well-known ground. There is nothing surprising in all this, and we can live with it. I do not think this paper really discovers it. This is old hat, really.

DEAN LEDERMAN: Again, I presume he is doing the job that the secretariat asked him to do. He was commissioned.

PROFESSOR McWHINNEY: You commissioned this paper?

THE CHAIRMAN: Yes.

PROFESSOR McWHINNEY: I did not understand this. To do a summary?

DEAN LEDERMAN: I do not know what exactly he was instructed to do. He must have been given some direction.

PROFESSOR McWHINNEY: Then I think I would prefer an historical summary of the evolution of these views, giving proper credit.

DEAN LEDERMAN: It may be that in the reading that you and I do this has all been gone over, but it is a new bowl of soup to most people.

PROFESSOR McWHINNEY: What is interesting is that in effect what starts as a Quebec nationalist claim, verbalised perhaps with tongue in cheek for something else, but anyway with a few irreverent footnotes that annoy Russia and annoy the federal government; this sort of thing becomes acceptable and now it is two federal White Papers. I think it would have made it much more interesting to show when these claims were first verbalised, that the Russian footnotes disappear and that they introduce federal White Papers.

MR. PERRY: From Russia with love!

DEAN LEDERMAN: I do not think really that everybody stands on everyone else's shoulders when they do a survey base of this kind. As I say, I think he has attempted to do what he was commissioned to do.

I think I will draw one more thing to your

attention in Mr. Sharp's paper, and this is on page 54. He says:

"In putting forward the above suggestions
"with respect to participation in international
"conferences and programmes of external aid
"and cooperation, the government wishes to
"emphasize that they are intended as a basis
"for discussion.

" The government hopes that they will be
"given careful consideration by all
"concerned.

" It will welcome additional comments
"and suggestions which may be put forward,
"and it will adopt a flexible attitude
"toward all aspects of the problem.

" It is not committed to any
"particular solution and is ready to
"consider all proposals which recognise
"Canada as one country and provide
"opportunities for Canadians from all
"provinces to share, as part of a united
"Canada, in the benefits of international
"cooperation".

I do not think (speaking to what you were saying, Ted) that the Quebec nationalists would be particularly happy with Mr. Atkey's overriding executive veto for the Governor-General-in-Council.

PROFESSOR McWHINNEY: I do not think he would be happy himself, if he thought it through.

This is one part of the paper that sits differently, because it does not flow from anything that has come before. It is not buttressed in terms of other references to this.

DEAN LEDERMAN: By a rather different technique, he shows a great deal of concern for the unity of the country, but I have said enough.

THE CHAIRMAN: I wonder if I could attempt to sum up thus far in the following way, because I think the discussion here has not been in any sense fundamentally opposed either to Professor Atkey's paper or to the proposition of publishing it. Rather, I think there have been three points made, in essence: (1) that we should attempt to have it abbreviated in all reasonable manner and in any appropriate editorial manner, to intensify his points by reducing the verbiage.

Secondly, we should attempt to remember that the audience, in large degree, is a lay audience (we hope) and wherever possible it should be de-jargonized or rendered in a manner that speaks directly to the point and to the reader.

Thirdly, we would want to ensure, as any good scholar would wish, that it is preserved from error of fact or misjudgment in content.

In this manner, we want to make sure that he is put in touch with those who could help him and advise him on these matters to improve the quality of the paper.

That to my mind leaves one basic question, and that is the whole question of the theme. Although I do not recall all the details of Eugene Forsey's criticism, it does stick in my mind, particularly from the things he expressed at the last meeting, that he had a fundamental concern about the paper appearing in the book because of the philosophy it appeared to express, and whether this would thereby compromise this paper, the government, and so on.

I must say I do not think we have ever felt constrained into compartments by anything we did or commissioned, provided the qualitative aspects were worthy. However, perhaps we might have a word or two on that as to your feelings.

PROFESSOR FOX: I have not read it really that carefully, but my impression is on this score Bill Lederman is closer to the proper assessment of the paper than Eugene is. As I read it really, this fellow is more Catholic than the Pope. He is going to give the federal government an executive veto which may not be challenged in the courts, over the provinces performing in the international sphere, even in areas of their own jurisdiction. Is that not your point in that?

DEAN LEDERMAN: That is right.

PROFESSOR FOX: Sharp has not said anything like that. In fact, Sharp is off in the other corner of the tennis court and saying: "Of course they have sovereign authority in areas

under their jurisdiction". The gist of the paper seems to me to be quite pro-federal.

PROFESSOR McWHINNEY: That is not the gist of the paper. It just occurs at the end. I think it is a sort of anti-federal view, and in the end you get these comments and you are drawing a conclusion together.

THE CHAIRMAN: I have too much respect for Eugene's opinion to gloss over his concern, though I do not quite feel I understand what is bothering him.

PROFESSOR McWHINNEY: I think Eugene makes the interpretation which I have certainly made and I think Alec made, that what the paper does is have some fun with the federal position; then at the end he suddenly flings in this little gimmick that does not flow from the paper, of the executive veto. However, I thought that was separate from the main points you made. You were really raising the question, whether when there was a paper hostile to the federal position there should be an automatic barrier against publishing it.

As I understand Eugene's argument, it was (1) it does not support the federal position; (2) therefore we ought not to publish it. I think this is a policy we have never accepted before, correct?

THE CHAIRMAN: I think that is right.

PROFESSOR FOX: We can look at the conclusions very rapidly. They appear on page 69,

if we admit this is an accurate summary.

PROFESSOR FOX: I do not think we need publish only ---

THE CHAIRMAN: I do not think we are trying to establish any one hypothesis as a Committee. We are trying to encourage points of view.

PROFESSOR McWHINNEY: It is a problem.

PROFESSOR FOX: I do not think it is a problem.

THE CHAIRMAN: I wanted to try to find out what the problem was in Eugene's mind.

DEAN LEDERMAN: My understanding of Professor Forsey's objections is that he is zeroing in mainly on this material on the Lieutenant Governor. Is that not right, Ed?

MR. GREATHED: Uh-hum.

DEAN LEDERMAN: He is zeroing in on that primarily, and if that is not exactly expurgated but much reduced. I think that much of what Eugene is objecting to will disappear. I think it could be reduced, as I have said, to one main argument one way and one main argument the other and let it go at that, because that is not the main thrust, as I read it, of the paper.

PROFESSOR McWHINNEY: Why would you want to emasculate it in this way?

DEAN LEDERMAN: Expurgate.

THE CHAIRMAN: Paul, we might come back to you.

PROFESSOR FOX: We can run through the conclusions, if you want (there are about five pages of them), but I have looked through them and I do not see anything there that is not quite pro-federal. Ted may say that that does not represent the object of the paper, that the conclusions are not accurately drawn from the substance.

PROFESSOR McWHINNEY: It would not worry me whether it is pro-federal or anti-federal in this context. I would say if it is academically valid, academically worked out, it should be published.

PROFESSOR FOX: I am just looking at Eugene's criticisms, Mr. Chairman. I think Bill is right that perhaps the most incisive deal with the Lieutenant Governor rather than with the treaty powers.

DEAN LEDERMAN: That does go to the treaty power, as a prerogative of the Lieutenant Governor, but I think the legal and constitutional case for prerogative in the Lieutenant Governor is very weak, and Atkey himself says it is weak; but he sets out to list everything that has been argued, and in his reply to Dr. Forsey he more or less says that he was not setting out to see what he believed himself but setting out to see what had been said. I think perhaps he ought to revise it in this respect, so that he is not, as he says, tainted with views that he does not hold.

PROFESSOR FOX: I get the impression, Mr.

Chairman, that Bill's earlier point that there are not many points of the Forsey criticisms which could not be corrected by editing, is true. but for the most part these are criticisms of individual errors or differences of interpretation that really could be, I think, eradicated or corrected if Bill were prepared to consult with Atkey and act as his sort of advisory editor here and work it out.

PROFESSOR SYMONS: I would be happy to leave this matter that way.

DEAN LEDERMAN: I have the greatest respect for Dr. Forsey, as everyone here knows, and it pains me a great deal to be differing with him like this.

THE CHAIRMAN: I think if there are real legitimate questions of fact, or even of interpretation, that can be accredited here, that is fine; but I take it otherwise that there is consensus (however we term "consensus" amongst representatives of universities representing 60 per cent of the university population) and if there is a consensus, can we proceed to include the paper?

PROFESSOR CONWAY: Some of Professor Forsey's comments are captious, I think, but a lot of them are very very good. Some of these things are just really embarrassing to read, and Professor Atkey should correct them. The first one, for example:

"Canada in 1867 was given dominion status

"as a member of the British Empire".

That does not make sense, historically or in terms of political theory.

DEAN LEDERMAN: That is bad.

PROFESSOR CONWAY: It shows really a miscomprehension of the historical process.

DEAN LEDERMAN: Or terribly sloppy language.

THE CHAIRMAN: Or both.

DEAN LEDERMAN: I think in the page of the paper later on he shows he understands about dominion status, but it is sloppy use of words.

THE CHAIRMAN: Let us approach Professor Atkey in the editorial sense, that we want to help him put his best foot forward, and let us not have any howlers.

MR. PERRY: There is one of Eugene's comments that you cannot really sweep under the rug. He says: "I cannot see any other end to the course except the dissolution of this country".

PROFESSOR MEISEL: He also says (and this may be a guide) that in the same volume there should be some presentation of the case against it. We can always ask him to put his comments in somewhat less detailed form and write an essay in which he seizes on the main points (I do not think he wants to publish this thing point by point) in which he shows why he thinks this would lead to the dissolution of the Empire.

PROFESSOR McWHINNEY: Somewhere in these minutes of May 2nd it sticks in my mind that somebody said we should not do anything or publish anything at the present time that would hurt the federal government. Is that Eugene's phrase?

PROFESSOR MEISEL: I think that is in Bill's letter.

DEAN LEDERMAN: It is in my letter, I think.

THE CHAIRMAN: The only thing troubling me is that all that has been said this afternoon described it as pro-federal and conventional and against that proposition. That is what is troubling me.

PROFESSOR McWHINNEY: I did not say it was pro-federal.

THE CHAIRMAN: I am saying, there was a comment at one time that it was, if not pro-federal, at least not anti-federal.

PROFESSOR McWHINNEY: I still take the point that all that has happened in this area, I always felt it was exaggerated, or the federal government over-reacted to the Quebec claims and now has come around and accepted them in the two White Papers. Really, it seems to me this is just a re-statement four or five years later of claims that were radical when made by Marchand, Sabourin and Gerin-Lajoie in '64, '65, '66 and '67.

DEAN LEDERMAN: I do not think they accepted these claims.

PROFESSOR McWHINNEY: They are the substance of them, whether it is part of folklore and established thinking.

PROFESSOR CONWAY: Professor Forsey says that if this is accepted, this would mean the end of Canada. This is where I stop listening to Dr. Forsey because what he is really saying is that "Unless my orthodoxy prevails, the country will be destroyed". When he has been talking about various sections of the Act, I accept him as an authority, but that is just an opinion -- in fact it is a prophesy, it is a sort of Mackenzie King crystal ball.

PROFESSOR McWHINNEY: You do not have to have only one interpretation in any article. What does it matter if there are two different opinions?

PROFESSOR MEISEL: I think there is a point in one of the things that Dr. Forsey mentioned: that no matter how often you make a disclaimer, some people will consider this as a statement of Ontario policy or Ontario attitude. I think for that reason, if he very strongly disagrees with it, he should be given the opportunity to write a short piece to go along with it. You can say I am again raising the question of the Brady-Conway exchange.

THE CHAIRMAN: It comes up in another way. This is a point we have to consider about our conduct in print; because, for example, there has not been a session of the Legislature since the last book was published when on every possible occasion

one member of the Opposition has not attacked the government, attacked the Committee, for including Dr. Forsey's article on the monarchy and not including the other case. My question always is that you can either attempt to be definitive in this rejoinder game, or you can say that we put out what we have got, and that is what we happen to have.

PROFESSOR BRADY: You can never be definitive. I am sure, no matter what you put in the book, there would be comments in the Legislature, would there not?

PROFESSOR FOX: Mr. Chairman, I do not regard this paper as being as radical as John Conway's paper.

PROFESSOR MEISEL: It is not.

PROFESSOR FOX: I would think this the much more orthodox paper.

THE CHAIRMAN: No-one will ever notice it when they come to yours, John.

PROFESSOR McWHINNEY: There is a revolution for you.

PROFESSOR FOX: I think it is relevant to raise this point. I do not regard this as a terribly radical paper. It seems to me pretty orthodox and routine.

PROFESSOR McWHINNEY: That is how much we have changed in four or five years: the radical ideas of yesteryear are now implanted.

PROFESSOR FOX: The obvious rejoinder, it

does not give away as much as Mr. Sharp does, and we have the reference Bill gave.

DEAN LEDERMAN: I do not think Mr. Sharp is so much giving away something as not facing the issue of who instructs these joint delegations. How do they reach the "one Canada" position?

PROFESSOR McWHINNEY: This paper was a compromise. Of course, there was a group of very sharp lawyers in External Affairs that wanted to attempt to consolidate it on this basis. I understand the non-lawyers said: "No, be pragmatic, case by case", and they are the ones that won, but I suspect this paper reflects a good deal of the lawyers' drafting and perhaps this is one of the reasons it is a little woolly here. There were definitely two wings in External Affairs on this, and obviously the lawyers were the less flexible and the more dogmatic, rigid and a priori.

They were wrong there, as it turned out. The country stays together and is not split apart over Gabon or any other of those places. As Mr. Bertrand said the other day: "Where is Gabon?" You can make this sort of joke of it now, looking back on it.

THE CHAIRMAN: The trouble is this leads us in the direction of infinity, because I suppose what we really would need is two papers -- one from Professor Forsey on "Why Atkey will lead to a dissolution of Canada"; one from Paul Fox saying:

"Why Atkey is not giving away as much as Mitchell Sharp". We would have both interpreters' side of the paper. Where do we really go with it?

PROFESSOR McWHINNEY: Put it in and let them all, in their reviews, make these different considerations.

THE CHAIRMAN: Another time, another place, and their own way.

PROFESSOR McWHINNEY: And in their own language.

PROFESSOR CONWAY: It might be a good idea, after the publishing is done, to have Dr. Forsey write his rebuttal. I am sure he would do it and very quickly. That would really tidy it up.

PROFESSOR FOX: You want to watch out. He may write one against you.

PROFESSOR McWHINNEY: Not limiting himself to the Lieutenant Governor, either.

PROFESSOR CONWAY: I am disappointed he has not.

THE CHAIRMAN: The other alternative might be to put all the papers in and ask Eugene to write a commentary on the volume.

PROFESSOR McWHINNEY: Introduction.

PROFESSOR MEISEL: Perhaps we could have the page divided and have the Forsey comments.

THE CHAIRMAN: I should say to the Reporter that I trust the good humour of these remarks will come through in the printed page.

I am going to suggest a procedural solution to the problem now. There appears to be certainly a consensus to proceed with the Atkey paper on the basis that we have discussed, and I would like to leave aside for the moment this question we have raised about rejoinder and so on to the end of the meeting, when I hope we will have a little time.

In that item we were going to discuss, once again, the future character of our work, and there are a couple of other questions I want to raise in that whole context, and perhaps treat them as part of the procedural basis.

Ed, do you want to say anything on Item 6 -- progress report on other contents of the volume?

MR. GREATHED: Just briefly, Mr. Chairman, and I will take up from your theme of infinity. Listening to the discussion today on various aspects of this volume, I think the items are being added very quickly, and it is really getting more and more difficult to know exactly when we are going to stop and when a publication date can be set.

I may just say, for the information of the members, that we have done some of the preliminary editing on a number of papers -- not all by any means, but on a number of them. We will be in touch with each author, so that he can vet what editing has been done. No editing will be passed

on, of course, to the printer, until the author has seen it. I hope that we can wrap up the editing portion of this particular task by the late fall. I really do not anticipate we will do it much before then.

I think at that stage then we will be able to proceed with the actual publication of the volume; but I think, from the comments that have been made today and from some of the rather difficult editorial tasks in front of us, we will take a good deal of time to publish this particular volume.

I think it is true that this particular volume is going to differ quite a bit from the previous volume in that the kinds of articles that we have in it will be of very wide range in character. I think some are very personal statements, and some are very much more scholarly in character; but, as I was saying to the Chairman earlier, I think that adds to the intrinsic interest of a volume of this kind, particularly when I said that most members are anxious to have as wide an audience as possible read them.

DEAN LEDERMAN: Must catch the Christmas trade.

THE CHAIRMAN: I hope we get that at least. I would like to see it out this year as soon as we possibly can.

MR. GREATHED: We will do our best.

THE CHAIRMAN: John, I know you want to get

some interest aroused in what you have to say.

PROFESSOR CONWAY: Yes.

THE CHAIRMAN: We have a problem in two parts: one, the general editing and, two, the plain printing business. Ed, did you consider following the procedure that we did before, of tabling in mimeograph form the papers as they would be, and then putting out a substantive volume, or do you think it would detract from the hard cover?

MR. GREATHED: I was not here. That was just before my time when that took place.

MR. STEVENSON: It is a little awkward. We were distributing that one free pretty well at the outset and then to come along a few months later and charge a fair bit for a hard-cover volume which is the same thing ---

PROFESSOR BRADY: I would advise against that. I think it is a mistake.

THE CHAIRMAN: There has been no pressure from the government to go that route this time. The last time there was not as much had happened. The whole constitutional exercise was not set up, and there were lots of questions as to what we were doing. I do not think there is that kind of pressure now.

MR. STEVENSON: We have promised, in the debate on our estimates, that there will be a hard-cover volume coming out this year.

DEAN LEDERMAN: We could compromise on a glossy

cover. There are all kinds of cover than this, to pull the price down a bit.

MR. GREATHED: I think, to speedup this process, as I think everybody is anxious to do, we might investigate the possibility (under our supervision, of course) of having the editorial and other very detailed work taken out of our hands and done outside, because of the extremely heavy commitments in other areas that have been placed on us here. I intend to investigate this because I think this might be one way of getting around this problem of time.

THE CHAIRMAN: I was going to suggest that if we could hire a professional editorial service, perhaps University of Toronto Press or somebody, during the summer -- not so much on the content but editing as such -- it might speed it up.

MR. GREATHED: John Meisel has made a suggestion in this regard.

THE CHAIRMAN: Good. Are there any other comments you had, Ed?

MR. GREATHED: No, not on that particular item.

THE CHAIRMAN: If I might carry on to the joint consideration of Items 3 and 7. Don, you can advise me on the best way to introduce this matter.

MR. STEVENSON: I think Dr. Brady is perhaps in the best position to do so, as Chairman of the Sub-Committee. There was a discussion of

Item 3 during the meeting at noon.

THE CHAIRMAN: All right. Perhaps, then, I might simply preface that by saying that, as everyone knows (it has been sent out, although I do not know whether it has been received) a very happy event took place in Quebec City on June 4th. The Prime Minister of Ontario, the Minister of Education, Mr. Guindon (a member of the Ontario Cabinet) and Don Stevenson, Ed Greathed and myself were present.

MR. STEVENSON: And Ted Rathe.

THE CHAIRMAN: And Professor Rathe of the Department of Education. Premier Bertrand and Mr. Lesage were present, and the whole affair was quite impressive.

PROFESSOR McWHINNEY: Mr. Cardinal?

THE CHAIRMAN: No. Rene Levesque looked on.

The event was followed by a luncheon, and I think all considered it a very happy day indeed. Professor Brady.

PROFESSOR BRADY: The Sub-Committee on Cultural Affairs met at luncheon and had a talk primarily about the question of the composition of a permanent commission for this Ontario-Quebec exchange cooperation in the cultural arena.

I have here a statement that is written out by our secretary, Charles, of our conclusions, and our secretary has accurately summarized them.

I shall read them.

First, that the Ontario half of the Commission have, as its chairman, someone outside the government. It was thought by members that that would have many advantages that I need not go into. It does present the problem, admittedly, of choosing a man who is not easy to find, who has intense interest in the matter and time to devote to it.

Secondly, that in addition to the chairman, the Commission should be composed, say, of two civil servants from the operating departments concerned or the principal operating departments concerned, plus a representative of the Franco-Ontarian community, and someone who is of neither English nor French mother tongue -- in other words, a representative of that ably defined group "ethnic group".

In other words, the Sub-Committee felt that the Commission, or the Ontario section of the Committee, should not be a large group.

THE CHAIRMAN: This is a chairman from outside, two representatives from operating departments of the government, and the other two?

PROFESSOR BRADY: Representative of the Franco-Ontarian community and someone who would be neither English nor French mother tongue.

Thirdly, that the Ontario side of the Commission should be supported and assisted by larger advisory body representing the cultural interests of the various regions and groups in the province. In

other words, that the Commission should not try to represent, let us say, symphony orchestras or what-not but that these bodies might be represented in an advisory body and the regional group interests might be represented in the advisory body.

Fourth, that in choosing civil servants for the Commission, interest in the exchange programme should be the primary consideration. Those civil servants should be as senior as possible and should preferably be bilingual.

Then also the Sub-Committee agreed that a letter should be sent to you, Mr. Chairman, stating not merely the Sub-Committee's pleasure but the Advisory Committee's pleasure at the signing of the agreement. It should, in other words, I think, express the Advisory Committee's pleasure. That may have been done, but I do not think so, and we thought it was very appropriate since we had sponsored this.

Also, the importance of finding someone to replace Professor Rathe as director of the Cultural and Educational Exchange programme at the earliest possible date. In other words, we felt strongly that the Prime Minister should be notified or reminded that this is very important, and that it should be attended to as soon as possible, since Professor Rathe ceases, I gather, to be active at the end of this month.

Then also, President Symons informed the

Sub-Committee that he had been asked by the Province of Ontario Council for the Arts to arrange a meeting between that body and the Sub-Committee on Cultural Affairs to discuss implications of the agreement for the Arts Council. Probably the Arts Council has some idea that it ought to present its position to the Sub-Committee on Cultural Affairs and the Advisory Committee; but I think that we should agree with the suggestion, if circumstances permit, to have a meeting at some time in the near future.

Those are, I think, the principal views of the Sub-Committee.

THE CHAIRMAN: On the first two points, the recommendations for the composition of the Ontario membership on the Commission, and, secondly, the expression of pleasure of this Committee: I presume you would want me to transmit both of those matters, on behalf of the Committee, to the government, so perhaps I should take them in turn.

First of all, the part of the report on the recommendations to the government for the composition of that Commission, perhaps we can have some discussion on that. In other words, I think that if one reaches that point, it would be desirable if the whole Committee could express itself.

PROFESSOR BRADY: Certainly.

THE CHAIRMAN: On both of those matters.

PROFESSOR BRADY: Yes, it should be the whole Advisory Committee.

MR. STEVENSON: Mr. Chairman, I may have missed a particular section when we were discussing this at noon, Dr. Brady; but when I was present the idea was that the Director of the Cultural and Educational Exchange Programme would definitely be on the Committee, possibly as secretary: if the chairman were not a civil servant, then the Director of the Exchange Programme should be the Secretary. Was this the consensus?

PROFESSOR BRADY: Certainly that was put forward and I think it was agreed to.

PROFESSOR FOX: Yes.

PROFESSOR SYMONS: Yes.

PROFESSOR FOX: Maybe I could speak to this as a member of the sub-committee engaged in the discussion. We went over it pretty hurriedly, because we did not have much time, but it seemed to us to be a feasible proposal and it brought in various elements that we thought needed to be there: and yet the suggestion that there be an advisory committee which would, of course, I imagine, meet only occasionally (once or twice a year, I suppose) seemed to be the way of handling most expeditiously the requests that would come forward from various interested groups within the province, to be considered in connection with the whole Cultural Exchange Programme. We thought it was

a very wise principle to divorce the functioning committee from these interested groups; and I, for one, proposed very strongly that the chairman especially should be somebody who is not representative of any of these interested groups but an outsider who is a layman with a very keen interest in this particular area, who would perform almost a judicial function on this committee.

THE CHAIRMAN: Roger, would you have any thoughts on that?

MR. SEGUIN: No, I agreed with Professor Brady. We had our discussion there.

THE CHAIRMAN: Is there any other discussion?

MR. STEVENSON: One point that did come up was that the Quebec people had certainly suggested that for their part they were proposing only civil servants on the Quebec part. I think it was felt that there was a somewhat different situation to Ontario where you had the key Quebec civil servants at the deputy minister or close to deputy minister level, who were very closely involved themselves in the cultural life of the province and who, in a sense, could represent some of the broader interests in a way that it would be really more difficult to see some of their Ontario counterparts doing. This was the reason for a good bit of the suggestions that they be outsiders.

DEAN LEDERMAN: I think it is a safe

assumption that what might be called the Anglophone element in Ontario is going to be represented in that Commission.

MR. SEGUIN: As chairman.

PROFESSOR MEISEL: Mr. Chairman, I was participating in this discussion, and I approved of all ideas that were put forward. I felt that what we were doing, all of us, was still thinking out loud, and I would like to see this thing written out and look at it before we send it on. I had some of the same doubts. I am not sure that it is really wise to insist that, for instance, someone who is neither English nor French should necessarily be on it. It may be a good idea, but I am not sure that it is.

PROFESSOR McWHINNEY: Why did you bring it forward, may I ask that? It struck me as odd, too, in the light of my own Royal Commission experience.

PROFESSOR MEISEL: There is no guarantee of this.

THE CHAIRMAN: There are two problems about this now. First of all, I should say I have not ever discussed this aspect of the thing with the Prime Minister, so he may well have his own thoughts on this matter, although your advice is naturally welcome.

Secondly, there is the critical question of time, because this Committee presumably will not

meet again until probably September now, and there will be some desire to get this thing running.

It might be, therefore, well if we were able to get something forward, John, even if it were only -- not necessarily a definitive recommendation but this kind of approach with reasons why these considerations might be taken into account. I do not know how best to do this without misrepresenting anyone.

PROFESSOR BRADY: I think, Mr. Chairman, on this question of the member who would represent the non-English, non-French, I see the delicacy in this. We nominate one member. He might be of German extraction, and there would be some other people of other ethnic extraction who might not think that it was appropriate: and if he were of Italian extraction there would be other doubts.

I think if somebody could be appointed, we need not say who would represent the ethnic groups, but who came from them, as it were; and I think this is wise in presenting the view to the Prime Minister, because he is bound to think of the inevitable kind of bargaining that goes on between these ethnic groups. Most of them are pretty conscious now, and they are not at all timid about presenting their views. Yet I think that it is important that a person be on the Commission who has some direct understanding of the groups.

Now, this will be not less difficult in

the selection. We do not have time to explore this matter very fully, but I think it was probably in all our minds.

PROFESSOR MEISEL: Also, as Paul mentioned, it was clearly important that the people on this be extremely interested and involved; that we do not want representatives of a certain group of government departments if they do not really care about what is going to be done. The main characteristic is ---

PROFESSOR BRADY: Interest.

PROFESSOR MEISEL: That people are genuinely interested and willing to give a lot of time to this.

In my own mind I am not quite sure that the approach we have taken is going to lead to the appointment of these types of people rather than representatives of regions as ethnic groups, which I think at this point is not the main factor.

MR. STEVENSON: One of the key people whom we were thinking about within the civil service, happens to be a former director of citizenship for the province, former director of the programmes branch of the Department of Education, and now director of training and development in the Department of the Civil Service, who is also a prominent member of the Ukrainian community on the board of the new National Institute, and so on. Here is a way one can combine all these things and decide.

PROFESSOR MEISEL: Merits in French and English and sings in the Italian opera company -- it would be great.

MR. STEVENSON: He speaks French.

PROFESSOR McWHINNEY: It is terribly difficult having somebody recognised as a minority member, if you recall these royal commissioners, who was understood to represent the minorities who, not being French-speaking by maternal language, opted for French; and it is a terrible responsibility to be commissioner for minorities.

Perhaps these have been taken care of, as with the U.S. Supreme Court, where you try to get a broad spectrum in your appointments, but you avoid putting it into concrete terms.

PROFESSOR BRADY: You do not make it an explicit condition.

PROFESSOR McWHINNEY: That is my feeling, Alec.

PROFESSOR BRADY: This is my feeling too. I think that was indicated, as I understand it.

PROFESSOR MEISEL: But if you write a letter specifying certain characteristics, then this becomes part of the kind of folklore, and this means that once you have a Ukrainian resign you have to appoint a German.

MR. GREATHED: Like the Senate.

PROFESSOR MEISEL: I am not too happy. I just throw this out, as an idea that occurs to me

that may be a poor one.

Would it be reasonable for Charles Beer to write a memo, do you think? He has obviously thought a great deal about this. In this memo, if you could lay out the various desirable things that one ought to keep in mind; if this memo were circulated to members of the whole Committee or members of the Sub-Committee, and if we wrote back within perhaps a week or ten days our reaction to it, then he might do another memorandum which would distil the various factors that emerge from this, and I think the secretariat could very well take whatever positions they feel best.

I think they have been closest to it. All we can do is to give them the majority of our thinking, which we could not do fully until today, and let them go ahead and decide what they think is best.

It may be, because of the departmental difficulties, I suppose, it would be best if whatever recommendations are made do not come through the civil service but through the Advisory Committee.

I would be perfectly happy to give a blank cheque to the secretariat to write on our behalf a memorandum of this sort, that would come from us but which would simply incorporate what is thrown up.

THE CHAIRMAN: Charles.

MR. BEER: Would not the solution here be simply what was suggested in the meeting, that there would be a letter and a draft of that letter would contain these points of view, and people could comment on whether they thought they included the various points that were raised, or included them in the way they should be, rather than a memorandum; because it will be a letter from Professor Brady to Mr. Macdonald. Does that not do the same ---

PROFESSOR BRADY: Of course, I think the letter should go from Mr. Macdonald, and is a letter to the province on behalf of the Advisory Committee.

THE CHAIRMAN: If I might give this advice, as I say, it may be for his own reasons the Prime Minister will want to appoint a completely outside commission, or he may want to appoint a completely inside commission. I think that in whatever case he and his government are quite experienced at deciding on the kind of advisers or representatives they want to appoint and their reasons for doing it.

Therefore I think our advice is much more to the point, to concentrate on the kind of objectives we want to see fulfilled by this Committee. The one obvious one you have made is to try to ensure that people who are serious about it and will work on it, or are bilingual even; but when all is said and done, the government will undoubtedly have its own views about the kind of representational quality it wants to have.

DEAN LEDERMAN: Mr. Chairman, as far as this present document is concerned, my opinion -- just off the cuff because this is a matter of first impression -- would be to specify only representation from the Franco-Ontarian community. This has become accepted under the circumstances such as this exercise contemplates, that the Franco-Ontarians would be guaranteed representation; but I would not go beyond that to other ethnic groups, including Anglo-Saxons or Anglophones, whatever you want to call them. Once you go beyond this sort of recognised position of the special historical position of French-speaking Canadians, then where do you stop?

The other thing I would comment is that I am uneasy about anything going forward from this Committee that is not before a full meeting of the Committee. There are some members not present today who would certainly have views, and I am uneasy about that. It may go forward in some other way, quite properly so, but I do not think it should go from this Committee without a discussion in the full Advisory Committee.

PROFESSOR MEISEL: Perhaps it would be better for the cultural people to meet again, and it go forward from it. That is not much help, of course.

PROFESSOR FOX: I think, Mr. Chairman, if you wish to have a letter from us, Dr. Brady as

the chairman of the cultural sub-committee, giving the benefit of our advice without committing the whole Advisory Committee, that is one way of doing it.

I think there is some need for speed. I would be a little fearful that if we left the whole thing until our next meeting (which presumably will be in September) there would then be a time lag after that and I would be very unhappy if, having signed this agreement, Ontario were accused of lagging in the implementation of it.

THE CHAIRMAN: I would think that this is right. I would think that in this instance, frankly, since the Cultural Committee has been so involved in this draft document, that the weight of the Cultural Committee could carry just as much weight in standing behind this, and I would certainly support it in that way in the discussions here; and that the sub-committee may take the discussion we have had today under advisement and try to come up with perhaps a modified version of its report. You might have a meeting, if you had the opportunity, when we quit here this afternoon, or within the next ten days or two weeks. I think that would be adequate for this purpose and get over this hurdle.

MR. STEVENSON: Because of the fact that the Director of Exchanges in the Department of Education leaves at the end of the month, I think the letter should go before the end of the month.

PROFESSOR MEISEL: I wonder if we could meet at the end of this session?

THE CHAIRMAN: I hope we can conclude fairly soon now, and this will give you an opportunity. Would that be acceptable to everyone? Harvey?

MR. PERRY: I am not on the committee.

THE CHAIRMAN: I know.

MR. PERRY: Yes, there is only one real point of difference, it seems, and that is whether you name specifically this one particular member.

PROFESSOR MEISEL: There are other problems, that people should be bilingual.

MR. PERRY: A lot of this is taken for granted, surely. If it is not taken for granted, we are in real trouble.

THE CHAIRMAN: Let us leave it on that basis, and I will get the report of that committee and transmit it when it is ready. I am still conscious of the point you raise, even though it is only going forward from the Committee, Bill. One might circulate a copy of the report, I suppose, to other members of the Committee.

DEAN LEDERMAN: If you could get consent by mail from all members of the Committee, then go forward as the Committee's view.

THE CHAIRMAN: We will try and handle it as circumstances permit.

As to the other two points, one was the

expression of appreciation of the Committee, and the other is the expression of the importance of securing a replacement for Professor Rathe.

I take it no-one would dissent from those two points, and I can put those two points forward forthwith to the government.

The final point (again putting on my bureaucratic hat) I would just have an instinct of a little bit of caution in the instance of the Arts Council meeting, for the simple reason that the Ontario Arts Council is an advisory body to the government, and this cultural exchange programme is an internal programme of the government.

I certainly think there is nothing wrong with the members of the Arts Council talking to members of the cultural and linguistic committee, but I think we should keep before us nonetheless the lines of communication. I would not want it thought that perhaps the Arts Council were advising our Committee, who in turn were advising the government, as it were. Without going further, I might leave it there.

PROFESSOR BRADY: Mr. Chairman, I think I fail to make clear that this last item was a report to this Committee. I was not suggesting that that should go on to the Prime Minister.

THE CHAIRMAN: I understood.

PROFESSOR BRADY: In other words, if we meet members of the Arts Council. I think it should

be done quite informally - some members of the Arts Council, some members of this, might meet and talk.

THE CHAIRMAN: I think this is fine and I understand that, but if I could just go on off the record ---

--- Off the record discussion.

PROFESSOR BRADY: This request may have come from an illusionary notion in the Arts Council that we can effect a distribution of money, which of course we cannot.

THE CHAIRMAN: I would not want to see your Committee, by generous instincts, embarrassed in any way, that is all.

PROFESSOR SYMONS: Mr. Chairman, would it help if I gave a little more background to the request from the Arts Council? It was simply a phone call from Mr. Nicholas Volk, who has recently joined the Arts Council. Some members at any rate of the cultural sub-committee had been alerted that he might be in touch with us to ask for advice and comments on this. Then just as I was leaving to come to this meeting, he phoned me and asked if it might be possible.

I was not clear and I am not sure that it was for the members of the Council or for some of them to meet with some of the people who would be interested in the cultural exchange programme. I am afraid I know nothing more about it.

PROFESSOR BRADY: You would agree, Tom, I am sure, that if we meet members of the Arts Council, it should be strictly on an informal basis.

PROFESSOR SYMONS: Very much.

MR. PERRY: Mr. Chairman, may I just go back to one point -- the advisory committee that is suggested. Might it not be better to make clear how this should be appointed? Should it be appointed by the main committee or by the government? The advisory committee has to be responsible, presumably, to the Commission, but should it be appointed by it, on its own advice, or simply by the government?

THE CHAIRMAN: That is a good point. It was not touched. Really, from the discussion, it was suggested that it is an advisory committee of the supervising commission, and I think this is a matter that you had better ponder in your deliberations.

Are there any other matters in the cultural and linguistic area? Do you want to pursue that point?

MR. PERRY: No, I just wanted to know if the subject is still open.

MR. STEVENSON: I think there is no question that the feeling was that the immediate task is to appoint four, five or six members of the small committee. Perhaps the others might be appointed by the government on the advice of the

small committee or something like that.

MR. PERRY: I think it would be better hinted at, at any rate.

THE CHAIRMAN: Could we go on to the other business and three or four points here, one or two of which have arisen today.

First of all -- and I do not want to suggest a prolonged discussion on this which would take us a very long time, and this is a confidential matter -- the Prime Minister did ask me to seek your advice on this question from your point of view. He has other considerations to introduce to it. He is expecting, once again, that the question of whether there should be a Select Committee or a House Committee of the Legislature on the constitution will come up or should come up. This has been raised once or twice before. I see that the Prime Minister of Canada is under the same pressure to consider it in Ottawa.

As I say, the Prime Minister will have his own basis and his own terms of reference for making that decision, but in the context of the general mood of the country and in the context of the question: "Who should really be involved in these kinds of decisions or examination of this question?" he did just ask me to elicit any views you might have on, you might say, the advisability at this time of a committee of the Legislature.

Of course, the other reason for asking you

that is that if such a committee were set up, it would undoubtedly raise the question of wanting, once again, to seek out your presence from time to time. I have no doubt.

MR. PERRY: Are these committees given any terms of reference, or are they simply given a name?

MR. STEVENSON: Normally I would think any Select Committee has fairly specific terms of reference; standing committees, no -- just a name. However, this would presumably be a Special or Select Committee.

THE CHAIRMAN: Special or select, I would think.

MR. GREATHED: They might not be any more specific than the terms of reference of this Committee.

MR. BRADY: Mr. Chairman, last time a prime minister was under pressure to appoint a committee, he decided to have a debate instead. Actually Mr. Trudeau has not agreed to the idea of a committee. He said that was a possibility, but he has suggested there will be a debate probably. Whether he means that the debate on a given day will discuss the constitution of the committee, I am not sure, but he mentioned that the other day.

So you will have to consider whether debate similar to what was had before in the Legislature would be appropriate. Certainly it could not do any harm, and it might placate

criticism that members of the Legislature and members of other parties in the Legislature other than the government hold, for some part to play at least in discussing the problem of the constitution.

PROFESSOR McWHINNEY: It changes your system of government very dramatically if you have a standing committee, particularly a bi-partisan or multi-partisan one. One understands Premier Lesage's conclusion, after his famous bi-partisan committee on constitution was that it was quite a nuisance to him and he was rather sorry he had started it. It may be that is not a correct interpretation, but one understands this.

They are not part of the parliamentary system that we know. This by itself is not an argument against them, but they do tend to take some of the ball away from the executive. You get a sort of tug-of-war, as you get in the United States and in some of the European legislatures.

I would avoid rushing into an ad hoc decision of this nature on this matter without giving it a little more thought in a broader context. It could embarrass the Prime Minister at some later stage, and you would want to be sure that you had warned him of the potential embarrassment, as well as the gains from it.

MR. STEVENSON: Mr. Chairman, just to comment a little on what Professor Brady just said, in reading the federal Hansard just recently I

certainly got the distinct impression that Prime Minister Trudeau has promised more than just a debate. He has very much considered the establishment of a committee. He has not committed himself to it, but he has said that it is very much under consideration.

PROFESSOR McWHINNEY: A multi-partisan committee?

MR. STEVENSON: Yes, and in Ontario also I think Mr. Robarts would certainly be thinking of this in addition to a debate, because when he tabled the Ontario working papers earlier this week he said there would be a debate on those papers later on.

PROFESSOR McWHINNEY: Would they be a multi-partisan committee, standing committee of the Legislature?

PROFESSOR FOX: Select Committee.

THE CHAIRMAN: Select Committees are all multi-partisan, but of course they are weighted in favour of the government.

PROFESSOR McWHINNEY: A standing committee is a little bit different from your Select Committee, though, is it not?

PROFESSOR BRADY: It wouldn't be standing.

PROFESSOR McWHINNEY: It wouldn't be.

THE CHAIRMAN: Do others feel that debate is a proper vehicle and is a continuous way of involving the views of all -----

PROFESSOR SYMONS: Mr. Chairman, perhaps

at this point it might be the best way to go, but I should not be surprised if at some point it proved the desirable thing, in keeping with our parliamentary system, that there should be a Select Committee.

DEAN LEDERMAN: Mr. Chairman, I think the constitutional debate in this country has now reached the point where whatever is the proper form of committee in the provincial legislature and in the federal parliament ought to be used, and I would say it ought to be used for this reason.

One wants to keep the process of discussing the constitution legitimate, that is, within the bounds of the parliamentary system. There is, as I read the signs, a stronger and more insistent demand arising from opposition parties -- and some of them quite powerful opposition parties -- who in the fullness of time are going to be governments in their turn in some of the provinces, and containing many concerns and interests that want to get a little closer to the process, particularly if the federal-provincial conferences are going to revert to closed conferences without leaders of the opposition parties as observers. If that is going to be a future pattern, then I think there is a real need for the federal and provincial governments to meet this perfectly proper feeling of a desire for more involvement. If it can be satisfied by the committee device, all-party committee in our present parliamentary legislative bodies (and it can) this is

the way to do it, simply to provide a forum. When the committee reports, you could have your debate in the full Legislature.

I think it warrants very serious consideration and offhand I would favour it. What the timing is to be is a matter of political judgment on which I do not have much to say, but I think we ought to move in this direction.

PROFESSOR FOX: I would like to speak to this, Mr. Chairman. I think I would agree completely with what Bill has said. It seems to me in particular in this instance, where the Prime Minister has said a great deal about the necessity for public debate and involving the public in any constitutional reform, that it would almost be indefensible not to be willing to appoint a committee to involve members of the Legislature in the debate.

For some time I have felt strongly that there should be a federal committee in Parliament, if Mr. Trudeau is serious about involving the public in this discussion, and I think exactly the same argument holds for provincial legislatures.

While I am not enthusiastic about the prospect of members of this Committee appearing before any such committee, I think one has to decide which is the more important matter here, and I think that the validity of as full a discussion as you can have is an appealing argument.

THE CHAIRMAN: I suppose as far as members

of this Committee are concerned, the members of this Committee are free citizens and they can choose to respond in whatever way they are inclined.

DEAN LEDERMAN: If one had these committees, we are going to have a meeting of the Estates General kind of thing. I don't know.

MR. GREATHED: Glendon 1967.

MR. PERRY: What is the general practice? Are they committees with free hunting licences?

THE CHAIRMAN: Perhaps you can help us, Ray, on the matter of the various House Committees, standing committees and select committees.

MR. FARRELL: There are roughly a dozen, or a little more, standing committees on various matters that come up. One, for example, is legal bills and municipal affairs; another is health and welfare matters.

THE CHAIRMAN: Education?

MR. FARRELL: Another for education which, of course, comes under University Affairs. Any important bills in these particular areas would be sent out to these committees for consideration. Presumably the Medicare Bill, for example, will be sent to the standing committee on health and welfare. Groups can come in and make representations to these standing committees.

Select committees are slightly different matter. They are usually appointed for some specific purpose. I was just trying to think of

one.

PROFESSOR FOX: Youth?

MR. FARRELL: The youth committee has reported. There is one on elections that is going on now, and it is appointed, of course, to look into the whole election system of the province.

THE CHAIRMAN: Corporations Act is one.

MR. FARRELL: Corporations is one which seems to be rather dormant, but I guess it is going. They appear to have died down a little bit in the last year or so, but for a while there were about three or four going all the time. They were usually appointed for some specific purpose, to study the problems of youth, or there was another one ---

MR. STEVENSON: The Smith Report.

MR. FARRELL: Conservation authorities, and so on. Of course, they would not be appointed if the area of study was not important, but I was going to say that the more important ones usually travel around and have hearings, and there are usually a few visits to the States and U.K., one or the other, worked in to get information on the way it is done in other jurisdictions.

The report is presented to the House. They have a secretary appointed who is pretty well full-time during the tenure of the committee.

I think they have brought out some good reports, but unfortunately sometimes they have to be studied further, and another study ---

PROFESSOR MEISEL: Another trip.

MR. FARRELL: They do not always produce as much in the way of results as their work and effort and time would warrant, but this is just the way the government works. The different departments have to look into the matter and then the report is presented.

PROFESSOR FOX: This Committee could travel to Peterborough and Kingston.

THE CHAIRMAN: There seems to be a certain current in the Committee that this is quite consistent with both parliamentary system and participatory democracy, and that certainly no-one would be either surprised or upset by such a procedure.

MR. FARRELL: I think, Mr. Chairman, as you pointed out, the membership is always representative of the membership of the Legislature, so the government always has a majority, and in both select and standing committees the government MPP is always chairman. The only one is Public Accounts in the last few years, who has been opposition.

THE CHAIRMAN: I guess that is the one exception.

MR. FARRELL: Yes, that is the only one.

PROFESSOR SYMONS: Taking up the point about being quite consistent with the parliamentary system, I would agree with that and just perhaps underline it and say that it would be inconsistent with the parliamentary system if in due course and

pretty soon the discussion is not put into the legislative bodies of the country through such procedure as the Select Committee.

I think during the preliminary phase, which seems to be coming to an end, the more restricted approach that has been followed has been the most creative one and the necessary one. I think there is a very strong growing feeling amongst the public that matters ought to be taken into the legislatures, and I think that is an understandable one. I think beyond a certain point it is simply not appropriate to short-circuit the legislatures.

THE CHAIRMAN: I think that gives me a very good feeling on that which I can report.

MR. GREATHED: Mr. Chairman, I wonder if I could just ask Ray whether these select committees have a specific life.

MR. FARRELL: They are usually appointed to study certain problems, of youth, for example, and when they have conducted all the studies that I suppose the chairman and the members feel are worth while, then the secretary ---

MR. GREATHED: They wind it up.

MR. FARRELL: -- writes its report and it goes over and it is presented. That is the end of it.

I might say there was one committee in the past in whose case the government stepped in and told them its life had been long enough and it was

time to start winding up.

THE CHAIRMAN: What was that committee, on aging?

MR. FARRELL: No, it wound up in due course. This was the committee on municipal legislation. I think they went for three or four years and presented preliminary and interim reports. Finally, I think after a little pressure, it presented its final report which ended its life.

MR. GREATHED: I only asked that because I think any committee on the subject we are considering here is in for a long haul.

MR. PERRY: Better appoint some of your younger members.

MR. FARRELL: I was just wondering if a standing committee would not be more conducive to proper study of this than a select committee. A select committee really is investigating in the sense that it is going to look into an area and present a report to the government as to what it should do.

THE CHAIRMAN: You really want a vehicle that can inform the Legislature through its own members.

MR. FARRELL: A standing committee would be one to which a formal report is presented and which would have the members of the Committee in and grill them.

THE CHAIRMAN: It seems to bring in even

civil servants. I must say that I think, in comparison with Ottawa, life is much less complex. before Bob Bryce is called / the Senate Committee on Banking and Finance or the House Committee on this and that, and he is often called on to make presentations, even though it must be a little embarrassing to do so in the way they are.

PROFESSOR BRADY: But they are asked only for information.

THE CHAIRMAN: For information.

PROFESSOR McWHINNEY: And it is the initiative, is it not, of the government?

THE CHAIRMAN: Is it? I don't know.

PROFESSOR McWHINNEY: I know in External Affairs Department there was some point that only official anti-establishment was called.

The real issue in this thing is whether your committee has power to cross-examine, if you submit witnesses to cross-examination, whether the minority members have the right to bring in witnesses and to cross-examine. and so on. Once you get into the latter situation, you are into your American system, which has very many advantages. I think this is one of the reasons why some of the young "turks" in Ottawa are now demanding it. They want to shift the impetus away from the Cabinet, and certainly from the "kitchen" cabinet, which is in some ways more powerful than the Cabinet.

THE CHAIRMAN: Perhaps we can come to the

second point, and I want to report on an action contemplated in this area.

Professor Watts called me and he had a request from one of the federal ministers on the committee on the Senate, who had heard about his paper and was anxious to read it.

This paper was commissioned by this Committee, and Professor Watts is quite prepared to be guided by us on this matter. On the other hand, I do not want to get into the position of being a "Mrs. Grundy" on it; also I feel it is perhaps more important that this idea should be in wide currency than that anyone should be worried about their paternity and that this paper is going to be published in due course.

On the other hand, I felt it might be subject to misinterpretation, or might become embarrassing at some stage, or might become politically awkward if the paper did go the direct route.

We discussed it among the staff and came to the view that a quite appropriate way was to follow the direct course that was being followed in the Continuing Committee of Officials, where different governments had working papers or documents which were relevant to the problem being discussed -- simply to table them in that medium, and in that process they became available to ministers in all governments to draw on as working

documents.

We certainly felt Professor Watts' paper was quite appropriate in that context and would help discussions, particularly since the ministerial committee on the Senate, as we heard earlier, had been seeking guidance from any appropriate source and finally this paper is going to be published; and that in tabling it in the Continuing Committee we would have a note as to where this paper came from and what its intention was with respect to publication. So I took it upon myself to accept that situation, and I hope that this meets with the approval of the members of the Committee.

PROFESSOR FOX: The only difficulty I think you might get into there is through some members of your Legislature here who might want other papers and who might resent the fact that an Ontario Advisory Committee paper had been tabled in Ottawa and not tabled in the local House.

THE CHAIRMAN: That raises a good point.

MR. STEVENSON: Not tabled in the federal House at all.

PROFESSOR FOX: I mean tabled and available to external ---

DEAN LEDERMAN: Being tabled in the federal-provincial conference, in this sense it remains franked "confidential".

THE CHAIRMAN: Yes, these papers are all confidential and can only be released outside that

medium by the submitting body, as it were.

DEAN LEDERMAN: My only suggestion would be that if you are going to do that, perhaps you should table the Forsey-Creighton paper, too.

THE CHAIRMAN: Which are to go out?

MR. STEVENSON: No, they are already -- sorry.

DEAN LEDERMAN: If you want to table in that same confidential way. I do not know whether that paper is written or not yet.

MR. GREATHED: Yes, it is.

PROFESSOR McWHINNEY: Mr. Watts can give it to anybody he likes, can he not, extra copies? Most publishers adopt that rule.

DEAN LEDERMAN: It was commissioned research, I suspect.

PROFESSOR McWHINNEY: They do if they approve of the pagination; most publishers allow release at that stage.

THE CHAIRMAN: On your point, Bill, of course, it would go the other route around. One would presumably have to seek permission or want to seek permission of Forsey and Creighton to follow the same route for their work; but I am less concerned about that since they are papers that someone expressed an interest in and they are all going to appear eventually.

Then the other point which Paul Fox raised: if you are going to put it into the

Continuing Committee as a research document from the Ontario delegation, maybe it should go into our own House, too.

MR. STEVENSON: If they were to wait until the autumn, then we might have the decision to make. It depends on the publication time of the volume. We might want to table it first but it may be the volume might be ready almost soon enough.

THE CHAIRMAN: This will be quite a lag between now and then.

MR. STEVENSON: Except there may be only one more week of the House.

THE CHAIRMAN: But we need a decision today. We have got one more week.

PROFESSOR MEISEL: Is Bill not right on this? Could a person who has done a study for the Committee, not write to the Committee and say: "Would you object if I gave my paper or my study to XYZ?" and you can say: "Yes, it would be all right in this case. There is nothing in it that we feel should not be released"?

DEAN LEDERMAN: Actually the Committee has no existence as a party to the contract; it is the Crown in the right of the Province of Ontario that has paid the fee for this.

PROFESSOR McWHINNEY: You perhaps ought to pay a nominal fee, \$5, say, and that settles the issue.

THE CHAIRMAN: Maybe we have adopted an

elaborate route that leads us into other problems. Maybe the advice should have been to Ron: "It is your paper, at least you wrote this paper for us, and we are going to publish it"; that what is in it is part of the stock of knowledge, and not to be worried about with whom he discusses it and to whom he shows it.

PROFESSOR FOX: That is a simple line, because he is not a member of this Committee, and therefore he is not put in the embarrassing position of giving away anything of which he has been author while he was a member of this Committee; whereas we, as members, would not have this privilege because we are members of the Committee and ---

PROFESSOR McWHINNEY: He was paid, though?

THE CHAIRMAN: Yes, he was paid.

PROFESSOR McWHINNEY: That is rather a different situation.

PROFESSOR FOX: I am suggesting it is a defensive line, if you wish to defend yourself.

DEAN LEDERMAN: I do not see anything wrong as long as the confidentiality is preserved until publication, releasing it informally with the understanding here that it is all right.

PROFESSOR MEISEL: In some ways it is no different from a chap giving a manuscript to a friend to read before he even submits it, where he is seeking advice.

PROFESSOR McWHINNEY: Surely there is a difference.

THE CHAIRMAN: This friend is in a very special place. (Laughter)

MR. STEVENSON: From the point of view of our government, we would much prefer, I think, internally, to see it go simultaneously to all of the governments represented in this Committee, not just the federal government.

PROFESSOR McWHINNEY: Is this a substantial fee, or a nominal fee? If it is a substantial fee, it is a straight contract thing.

THE CHAIRMAN: It was quite a fee, as a matter of fact \$750.

PROFESSOR McWHINNEY: You are getting into a very elemental contract relation.

DEAN LEDERMAN: If you are talking of copyright, it is Crown copyright.

PROFESSOR McWHINNEY: Elemental contract situation.

THE CHAIRMAN: I might say Ron Watts was not pressing this matter, and he understands the position perfectly. He is prepared to be guided by the government and the Committee. If there was anyone urging leniency in this discussion, it was me. In the first place, I do not want to be bound in any unpleasant way in the context of federal-provincial relations. In the second place, my own inclination is always that if there is something to be added to the stock of knowledge, it is better to have the widest possible circulation.

PROFESSOR BRADY: I think, Mr. Chairman, I would agree with, I think, Paul Fox who raised the matter, that if you submit it to the Continuing Committee as a paper, it is confidential there. Is it available to a person in the Senate who wanted to see it?

THE CHAIRMAN: Yes, it is available. Once something goes into the Continuing Committee, I think it is understood that the members of the Continuing Committee as civil servants serve their own government, and anything there is part of everyone's ministerial possession.

PROFESSOR BRADY: I see one difficulty here. This is a paper about senates, an interesting paper about second chambers, and it has possible value as an example to Canadians, that is, selecting something on second chambers. There are other things on second chambers that we are going to have data on. There is a paper by Creighton and Forsey. Would it not give a slightly wrong impression that may be you should select this one paper to be submitted to the Continuing Committee?

THE CHAIRMAN: It also sets us off on a new route. I mean, the papers we had tabled before have not been papers done for this Committee, but have been government papers.

PROFESSOR BRADY: Yes.

THE CHAIRMAN: I am inclined to think that perhaps we should simply say that we have no

objection to him showing the paper to those persons who are interested in the subject on a confidential basis; that it is going to be published and it is shown in advance of release in the hope that good judgment prevails. That makes it much less of a big issue.

DEAN LEDERMAN: I think that is all right.

PROFESSOR BRADY: I think this is a much better way of doing it.

DEAN LEDERMAN: The person requesting it then knows he is reading it on those conditions.

PROFESSOR FOX: Then if anyone criticises you, you would not be subject to the criticism that you had only released one side of the research.

THE CHAIRMAN: I can see a lot of things in the Legislature -- partial treatment argument, a number of arguments to bring up.

PROFESSOR FOX: May I just ask a question on that point. If a member of the Senate can ask the federal-provincial secretariat for a paper, why cannot a member of the provincial legislature ask?

DEAN LEDERMAN: This person happens to be a minister.

MR. STEVENSON: Only a member of one of the committees.

THE CHAIRMAN: Member of the ministerial committee.

MR. STEVENSON: It only relates to one

single ---

PROFESSOR FOX: This senator is a member of the government.

PROFESSOR McWHINNEY: With great diplomatic experience.

--- Off the record discussion.

THE CHAIRMAN: I think the position is that if anyone raises it, the paper was about to be published and we were aware that Professor Watts was willing to discuss this paper and offer his advice on a confidential basis, and hope that that looks after it.

The final question we have to deal with was the omnibus question, in which three items came up today, and that was the question of the future work of this Committee.

One was the scope of our work, which was provoked by the discussion of John Meisel and Professor Conway this morning about the future of confederation. The second was the question of our dialogue, so to speak, within our publications; thirdly, is the question of new members to this Committee.

I have had some very helpful suggestions to that effect, and I have discussed the principle with the Prime Minister. I think he is quite agreeable and I am quite happy at the prospect of appointing, say, two new members of this Committee (no more) to replace those who have left. I have had one

suggestion in the political science realm which appeals to me greatly, and which I am going to put forward as a recommendation. I would like still other suggestions on perhaps the economic and sociology area which, I believe, needs strengthening, although Professor McIvor will be returning to the Committee this summer. I will just say I would welcome suggestions that you might have. I would like to hope that over the summer and before we begin the new season, we might have filled out the Committee by one or two people, no more.

The basic question, I felt, that was raised today about whether we should be debating with one another within the volumes of our book, and also the amount of breadth we should give to our enquiry, were really related in the general sense of the conduct of this Committee and the interpretation of its terms of reference. Perhaps if we could spend a moment or two on this, we could get some feeling for the road ahead.

PROFESSOR MEISEL: Mr. Chairman. I would like to speak in support of the idea that we vary the contents of the volume a bit, and that we use it to achieve a number of purposes. It seems to me that one of the needs that we should try to meet is to help inform the public and contribute to the quality of the public debate on the questions of concern to us; and that within these terms of reference it would be very useful indeed to have

some sort of debate or dialogue associated with certain things that were published. It makes it more lively and reveals more sides to an argument.

On this ground, I would think it would be extremely useful, for instance, to have the Brady-Conway discussion associated with the major Conway paper.

There is another benefit which flows from this, I think, and it is this. We are always going to be asked, I think, or misinterpreted in the sense that people will say: "What is in this volume is the opinion of the government of Ontario". If the volume contradicts itself, then it is perfectly obvious that that is not the case, and that what the Committee does is to canvass various kinds of opinion, and this is very eloquent proof of this fact.

PROFESSOR BRADY: As a member of the Opposition might say, "This is just characteristic of the government, you see. The Advisory Committee has contradictory opinions. It is contradictory in itself".

PROFESSOR MEISEL: That has been argued, and it has been said to the Opposition that the Committee has no viewpoint, that it has various viewpoints that have been admitted.

MR. GREATHED: I do not recall any comments on volume 1 in that vein.

PROFESSOR MEISEL: What were the comments?
that

MR. GREATHED: That/was the opinion of the

Government of Ontario.

DEAN LEDERMAN: It was merely the newspaper commentators that took that line, that while putting this disclaimer in it, it was obviously some kind of clue to the government thinking. This was Harold Greer's line.

I think some of the reaction of some of the commentators was too quick.

PROFESSOR CONWAY: I agree with Professor Meisel, in terms of literary device, I think this is a way of involving the reader. We do want to get a wide readership, and we want to get the argument going. If we show that we have argued ourselves, that will stimulate argument outside, and that is surely what we need.

PROFESSOR MEISEL: I would like to see it. On the other hand, if it is going to hold up the production of the volume, perhaps it is not worth it. In other words, I do not think we should complicate things too much at this stage, and try for the third volume, but I would like to see it.

THE CHAIRMAN: My reason for joining these two items together was to make this suggestion, that we have set up enough criteria about the technical questions of the constitution and confederation, and we have an elaborate machinery that is under way in Ottawa now which we did not have before. All of this we did not have for four or more years ago, and that part of our responsibility we have

fulfilled well.

What is not now being done well or properly in Canada is the type of joining of the issues that you have raised here today, and also on the level of the character of the discussion that John Conway introduced in his paper.

I am wondering if we could not begin to assign ourselves, particularly those perhaps who have not been in print so much, to a programme of work in which we would start doing papers and, if possible, try to deliberately have debating papers, provocative papers, working towards even another volume of a different character. I feel this might give quite a new flavour. I would think if you at the time, Harvey, felt you were in a position to do so from your own aspect, that is, in the fiscal questions, to bring us back, as you so often do in our discussions, to the hard realities; and have we thought about what we really want to do or be or so on?

MR. PERRY: This is my own sort of general impression of the paper. In many instances this is sort of peripheral to the real heart of our discussion at these meetings. This is particularly true in the fiscal and economic area.

In that sense, the kind of comment I have had from my friends is: "What are you doing on this Committee? There is not a word here of yours that has been printed".

PROFESSOR FOX: Soon will be, Harvey.

MR. PERRY: This does not matter to me.
I think in this sense they have been rather
misleading as to the true work of the Committee.
I do not know whether it will ever overcome this.

THE CHAIRMAN: We can chat here for a
moment and let the Reporter have a break.
--- Off the record discussion.

PROFESSOR SYMONS: I wonder if I could
make a suggestion. I thought the session we had
with our Quebec counterparts and others at Queen's
was enormously helpful and reassuring and good
conference work in ways beyond simply cross-relevance
to what they were doing.

I wonder if it might be useful, in the
late summer or early fall, perhaps after the new
members have been added that you have referred to
for us as a group to meet together somewhere for the
better part of two days, and to spend one evening
talking about things more freely?

PROFESSOR McWHINNEY: With the Quebec
people?

PROFESSOR SYMONS: No, just dealing with
our own group, but simply thinking extensively
about what the national problems are, what we can
most usefully do for them and what we could focus
on.

As Harvey says, our meetings recently
have dealt with a great many specific matters. We

have been grinding through material most usefully. but I think it would be a good thing if we jump off the agenda a bit and expand for an afternoon, then have dinner in the evening and follow it up next morning. I think we just might re-charge ourselves and go at things freshly.

PROFESSOR MEISEL: We might in fact write a couple of very impressionistic papers as a sort of starting point for this.

THE CHAIRMAN: I think that is a good idea. I would like to see it go, though, from the re-charging process, Tom, into a clear goal of work, you know.

PROFESSOR SYMONS: Yes.

PROFESSOR McWHINNEY: Nobody knows what is going to happen for sure, particularly after the Union Nationale congress, but when Quebec politics are settled, have you thought of another meeting with the Quebec people? It would certainly sharpen more focus on things like the Senate and Supreme Court. I suppose it might be Queen's again, or we could ask McGill, with our present relations with Quebec, to sponsor something like that. It might be interesting.

PROFESSOR BRADY: I think, Mr. Chairman, that would be more interesting than for us to meet together, because I do not know that we would generate so much fresh thought, especially meeting after having a good dinner. It would be pleasant,

but I do not know that the net product ---

PROFESSOR McWHINNEY: I think, for example if Bertrand is elected, he would encourage his staff to respond. They are an interesting group, as I discovered in this airport thing. Bertrand told me how much he benefited from talking to us on this point; because when you set up these priority things you have not experienced them quite that way.

MR. STEVENSON: I might say, Mr. Chairman. we have raised this with the Quebec civil servants a month or two ago. They said: "Let us talk about it again after today".

PROFESSOR McWHINNEY: After the congress?

MR. STEVENSON: Yes.

PROFESSOR SYMONS: I think that would be excellent and desirable in itself, to meet with some French counterparts. However, I was impressed with the value of our discussion this morning. I think that perhaps the whole confederation thing is going into a new phase where it would be useful to look systematically at problems of the social psychology of the country. I think the potential in this was illustrated this morning.

I think one of the problems has been -- and it has been an inevitable and natural one -- that 98 percent of our consideration of all matters has been in the Quebec context, and Canada is more than the Quebec context, though that is a major consideration certainly in this generation. I think it would

be useful to break out of the purely Quebec context and to think about matters of national character national purpose, and the role of the largest and perhaps most influential province in this country.

PROFESSOR MEISEL: Would there be some point in having some members of the Cabinet, having a joint committee meeting?

THE CHAIRMAN: I think this is another thing which would be of great value, because there is now a cabinet committee on the constitution which consists of the Prime Minister and each of the ministers who are on one of the ministerial committees. He has appointed, in total, quite a number of his ministers to those numerous committees, and in this way involved a lot more of the Cabinet and the younger members of the Cabinet in particular, in having a place in these discussions. This is very very good indeed, but I think that there is no doubt that they would all greatly appreciate the opportunity to get as much briefing on this as possible.

PROFESSOR BRADY: Surely, Mr. Chairman, that ought to hold first priority in a sense. We should be in touch with these ministers who are on the committees, if we are supposed to be advising the government, and I think that is a matter that we should certainly make some arrangements about.

THE CHAIRMAN: I do not think we are necessarily going to be definitive, but I have found

this discussion to be helpful. There are a number of alternatives here; there are a number of objectives in the discussion which I would like to try to pull together and then put before you; perhaps circulate to you a note with some suggestions as to how, in a practical way, to come to grips with this very helpful suggestion.

John, you may think we are trying to weasel off your suggestion about volume 2, and I guess I have.

PROFESSOR MEISEL: Call a moratorium.

THE CHAIRMAN: Trying to get that volume moving. With great respect, I have the feeling that rather than one short piece of dialogue in our first two volumes, really quite seriously I would like to be moving to another volume that would be a dialogue volume of a different character.

PROFESSOR BRADY: Mr. Chairman, may I just mention one thing, that I have discussed with Ed preparing a paper on the federal-provincial conference. I might say that I was asked very early in the history of the Advisory Committee to prepare a paper on the federal-provincial conference, as you will probably remember. I have done a good deal of work on it in the past, and I did not finish any paper because I got involved in preparing other things for the Advisory Committee.

PROFESSOR MEISEL: I thought you did it.

PROFESSOR BRADY: I did submit before the

Political Science Association a few years ago a paper on this theme which expressed my study up to that time. I submitted it at the Canadian Political Science Association, thinking I would get some valuable comments from them. Actually I do not remember that I got any comments, particularly valuable ones.

Anyway, they will be reported and revised, and when I have it completed I would like to be able to send copies of it to members of the Committee for their comments and criticisms.

THE CHAIRMAN: Very good. Just for the secretariat to note, there was a very long and somewhat impassioned letter from Ron Burns in the Globe & Mail the other day which seemed to cut at the whole question of the parliamentary executive process of changing Canadian federalism and the open private process. Perhaps if he feels strongly enough, we might commission him to go to print on this as well.

PROFESSOR BRADY: That letter puzzled me a bit. He seemed very disgruntled.

THE CHAIRMAN: It was a very strongly felt letter, was it not?

PROFESSOR BRADY: Yes, indeed.

PROFESSOR MEISEL: Last Wednesday's?

MR. GREATHED: June 18th.

PROFESSOR MEISEL: I missed it.

MR. PERRY: I think I can explain a little

bit of his feelings. He has been talking to luncheon and business meetings recently, and he has met two groups, one in Montreal and another in Vancouver. In fact he has asked me to arrange a similar luncheon in Toronto for him, and he has been imploring these people to take a much more active interest in all this constitutional revision that is now going on. He says that having implored them to do that, he then finds that they turn on him and say: "This is all very well, but what do we do? How do we get involved actually in this?" I think it is out of a sense of frustration that this is all going on behind the iron wall, and it is hard for the community to participate.

THE CHAIRMAN: He is going to start a new Estates General for Ontario.

MR. PERRY: This probably motivated the letter. I did not read the letter but I talked to him and I think this is the sort of feeling that he is now getting.

THE CHAIRMAN: I presume that unless you hear to the contrary, the next statutory meeting would be Friday, September 19th, to be held in a place, for a purpose and with whoever the course of the summer suggests might be the best use of our time.

MR. STEVENSON: might be Friday and Saturday.

THE CHAIRMAN: Why don't you hold open Friday and then Saturday morning, at least?

PROFESSOR SYMONS: It is a splendid way to mark the opening of the university year.

THE CHAIRMAN: I appreciate that for you people it is awfully close to the time. Do you know the time when most of the sessions are beginning?

PROFESSOR SYMONS: I think it is an excellent time.

PROFESSOR CONWAY: Excellent time.

PROFESSOR SYMONS: The eye of the hurricane.

THE CHAIRMAN: What I had in mind though is far enough ahead to wonder whether we should not be trying another day. I suppose it is difficult for university people.

PROFESSOR CONWAY: I think that date is fine, because as far as we are concerned it is just after registration and just before the first lectures -- a very pleasant change to get away from the campus.

DEAN LEDERMAN: I do not think you can choose any time that is better than any other.

THE CHAIRMAN: If there is no further business, we stand adjourned.

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